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CHAPTER 366

An act to amend and supplement the Budget Act of 2001, by adding Items 9800-001-0001, 9800-001-0494, and 9800-001-0988 thereto, relating to appropriations for the support of the government of the State of California, and making an appropriation therefor, to take effect immediately as an appropriation for the usual and current expenses of the state.

[Approved by Governor September 27, 2001. Filed with Secretary of State September 27, 2001.]

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

SECTION 1. The appropriations made by this act are in augmentation of the appropriations made in Section 2.00 of the Budget Act of 2001 (Ch. 106, Stats. 2001) 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.

SEC. 2. Item 9800-001-0001 is added to Section 2.00 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001), to read:

9800–001–0001—For augmentation for state employee compensation 45,517,000
Provisions:

1. The amount appropriated in this item shall not be construed to control or influence collective bargaining between the state employer and employee representatives.
2. The funds appropriated in this item are for employee compensation increases and increases in benefits related thereto, whose compensation, or portion thereof, is chargeable to the General Fund, to be allocated by executive order by the Department of Finance to the several state offices, departments, boards, bureaus, commissions, and other state agencies, in augmentation of their respective appropriations or allocations for support, in accordance with approved memoranda of understanding or, for employees excluded from collective bargaining, in accordance with salary and benefit schedules established by the Department of Personnel Administration.

SEC. 3. Item 9800-001-0494 is added to Section 2.00 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001), to read:

9800–001–0494—For augmentation for state employee compensation, payable from other unallocated special funds 15,359,000
Provisions:

1. The amount appropriated in this item shall not be construed to control or influence collective bargaining between the state employer and employee representatives.
2. The funds appropriated in this item are for employee compensation increases and increases in benefits related thereto, whose compensation, or portion thereof, is chargeable to special funds, to be allocated by executive order by the Department of Finance to the several state offices, departments, boards, bureaus, commissions, and other state agencies, in augmentation of their respective appropriations or allocations, in accordance with approved memoranda of understanding or, for employees excluded from collective bargaining, in accordance with salary and benefit schedules established by the Department of Personnel Administration.

SEC. 4. Item 9800-001-0988 is added to Section 2.00 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001), to read:

9800–001–0988—For augmentation for state employee compensation, payable from other unallocated nongovernmental cost funds 8,639,000
Provisions:

1. The amount appropriated in this item shall not be construed to control or influence collective bargaining between the state employer and employee representatives.
2. The funds appropriated in this item are for employee compensation increases and increases in benefits related thereto, whose compensation or portion thereof, is chargeable to nongovernmental cost funds, to be allocated by executive order by the Department of Finance to the several state offices, departments, boards, bureaus, commissions, and other state agencies, in augmentation of their respective appropriations or allocations for support, in accordance with approved memoranda of understanding or, for employees excluded from collective bargaining, in accordance with salary and benefit schedules established by the Department of Personnel Administration.

SEC. 5. This act makes an appropriation for the usual and current expenses of the state within the meaning of Article IV of the California Constitution and shall go into immediate effect.

CHAPTER 367

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

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. (a) The State Department of Mental Health shall work cooperatively with the California Mental Health Directors Association and other relevant parties to submit data on the current status of the county mental health programs. This data shall, at a minimum, address all of the following:

(1) The current structure and status of the financing of mental health services established in the statutes effected by Chapters 89, 91, and 611 of the Statutes of 1991, commonly referred to as realignment.

(2) Changes in the current service delivery system of mental health programs that have occurred since the enactment of Chapters 89, 91, and 611 of the Statutes of 1991.

(3) Trends in the financial status and service delivery systems within county mental health programs.

(b) By April 1, 2002, the department shall submit the data specified in subdivision (a) to the Legislature.

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 health and safety of persons receiving mental health services pursuant to Chapter 89, 91, or 611 of the Statutes of 1991 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 368

An act to add Section 1950.8 to the Civil Code, relating to landlord-tenant.

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 1950.8 is added to the Civil Code, to read:

1950.8. (a) This section applies only to commercial leases and nonresidential tenancies of real property.

(b) It shall be unlawful for any person to require, demand, or cause to make payable any payment of money, including, but not limited to, ''key money,'' however denominated, or the lessor's attorney's fees reasonably incurred in preparing the lease or rental agreement, as a condition of initiating, continuing, or renewing a lease or rental agreement, unless the amount of payment is stated in the written lease or rental agreement.

(c) Any person who requires, demands, or causes to make payable any payment in violation of subdivision (a), shall be subject to civil penalty of three times the amount of actual damages proximately suffered by the person seeking to obtain the lease or rental of real property, and the person so damaged shall be entitled to an award of costs, including reasonable attorney's fees, reasonable incurred in connection with obtaining the civil penalty.

(d) Nothing in this section shall prohibit the advance payment of rent, if the amount and character of the payment are clearly stated in a written lease or rental agreement.

(e) Nothing in this section shall prohibit any person from charging a reasonable amount for the purpose of conducting reasonable business activity in connection with initiating, continuing, or renewing a lease or rental agreement for nonresidential real property, including, but not limited to, verifying creditworthiness or qualifications of any person seeking to initiate, continue, or renew a lease or rental agreement for any use other than residential use, or cleaning fees, reasonably incurred in connection with the hiring of the real property.

(f) Nothing in this section shall prohibit a person from increasing a tenant's rent for nonresidential real property in order to recover building operating costs incurred on behalf of the tenant, if the right to the rent, the method of calculating the increase, and the period of time covered by the increase is stated in the lease or rental agreement.

CHAPTER 369

An act to amend Sections 113716, 113830, 113925, 113996, 114090, 114190, 114260, 114265, 114275, 114332.3, and 114332.5 of, and to add Section 113998 to, the Health and Safety Code, relating to retail food facilities.

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 113716 of the Health and Safety Code is amended to read:

113716. (a) (1) On or before January 1, 2000, each food facility shall have an owner or employee who has successfully passed an approved and accredited food safety certification examination. For purposes of this section, multiple contiguous food facilities permitted within the same site and under the same management, ownership, or control shall be deemed to be one food facility, notwithstanding the fact that the food facilities may operate under separate permits.

(2) The Legislature finds and declares that the certification required by this section may impose hardship on the owners and operators of smaller food facilities and, therefore, to the extent that a person who is seeking certification pursuant to this section requires training in order to successfully pass an approved and accredited food safety certification

examination, this training shall be designed and provided in as flexible a manner as possible. To that end, the Legislature further finds and declares that this training may include, but need not be limited to, classroom training, home study programs, and computer-assisted training.

(b) On and after January 1, 2000, a food facility that commences operation, changes ownership, or no longer has a certified owner or employee pursuant to this section shall have 60 days to comply with subdivision (a).

(c) There shall be at least one certified owner or employee at each food facility. No certified person at a food facility for purposes of subdivision (a) may serve at any other food facility as the person required to be certified pursuant to this section. The certified owner or employee need not be present at the food facility during all hours of operation.

(d) The responsibilities of a certified owner or employee at a food facility shall include the safety of food preparation and service, including ensuring that all employees who handle, or have responsibility for handling, unpackaged foods of any kind have sufficient knowledge to ensure the safe preparation or service of the food, or both. The nature and extent of the knowledge that each employee is required to have may be tailored, as appropriate, to the employee's duties related to food safety issues.

(e) The food safety certificate issued pursuant to this section shall be retained on file at the food facility at all times, and shall be made available for inspection by the health enforcement officer.

(f) The issuance date for each original certificate issued pursuant to this section shall be the date when the individual successfully completes the examination. A certificate shall expire three years from the date of original issuance. Any replacement or duplicate certificate shall have as its expiration date the same expiration date that was on the original certificate.

(g) Certified individuals shall be recertified every three years by passing an approved and accredited food safety certification examination.

(h) On or before March 1, 1999, enforcement agencies shall notify all permitted food facilities subject to this section of the new legal obligation imposed by this section and provide to them the names and contact addresses for all approved and accredited food safety certification examinations.

(i) The food safety certification examination shall include, but need not be limited to, the following elements of knowledge:

(1) Foodborne illness, including terms associated with foodborne illness, microorganisms, hepatitis A, and toxins that can contaminate food and the illness that can be associated with contamination, definition

and recognition of potentially hazardous foods, chemical, biological, and physical contamination of food, and the illnesses that can be associated with food contamination, and major contributing factors for foodborne illness.

(2) The relationship between time and temperature with respect to foodborne illness, including the relationship between time and temperature and microorganisms during the various food handling, preparation, and serving states, and the type, calibration, and use of thermometers in monitoring food temperatures.

(3) The relationship between personal hygiene and food safety, including the association of hand contact, personal habits and behaviors, and food worker health to foodborne illness, and the recognition of how policies, procedures, and management contribute to improved food safety practices.

(4) Methods of preventing food contamination in all stages of food handling, including terms associated with contamination and potential hazards prior to, during, and after delivery.

(5) Procedures for cleaning and sanitizing equipment and utensils.

(6) Problems and potential solutions associated with facility and equipment design, layout, and construction.

(7) Problems and potential solutions associated with temperature control, preventing cross-contamination, housekeeping, and maintenance.

(j) (1) Except as otherwise provided in paragraph (2), tests, utilizing forms recognized by the Conference on Food Protection, of the following food safety certification examination providers shall be deemed to be approved and accredited for purposes of this section:

(A) The National Restaurant Association Educational Foundation's ServSafe Food Protection Manager Certification Examination.

(B) Experior Assessments LLC.

(C) The National Registry of Food Safety Professionals.

(D) The certifying board of the Dietary Managers' Association.

(2) (A) On or before January 1, 2000, the department, in consultation with the California Conference of Directors of Environmental Health (CCDEH), the Conference for Food Protection, representatives of the retail food industry, and other interested parties, shall develop regulations to approve and accredit additional equivalent food safety certification examinations and to disapprove and eliminate accreditation of food safety certification examinations.

(B) Commencing January 1, 1999, at least one of the accredited statewide food safety certification examinations shall cost no more than sixty dollars ($60), including the certificate. However, commencing January 1, 2000, the department may adjust the cost of food safety certification examinations to reflect actual expenses incurred in

producing and administering the food safety certification examinations required under this section. If a food safety certification examination is not available at the price established by the department, the certification and recertification requirements relative to food safety certification examinations imposed by this section shall not apply.

(k) (1) For purposes of this section, a food facility includes only the following:

(A) A food establishment, as defined in Section 113780, at which unpackaged foods are prepared, handled, or served.

(B) A mobile food preparation unit, as defined in Section 113815.

(C) A stationary mobile food preparation unit, as defined in Section 113890.

(D) A commissary, as defined in Section 113750.

(2) (A) Notwithstanding paragraph (1), this section shall not apply to the premises of a licensed winegrower or brandy manufacturer utilized for winetastings conducted pursuant to Section 23356.1 of the Business and Professions Code of wine or brandy produced or bottled by, or produced and packaged for, that licensee.

(B) Notwithstanding paragraph (1), this section shall not apply to those food facilities that handle only unpackaged, nonpotentially hazardous foods. Those facilities may choose to meet the requirements through full certification, or may adequately demonstrate to the enforcement officer the knowledge of the employees of the food facility of food safety principles as they relate to the specific food operation.

(3) Notwithstanding paragraph (1), this section shall not apply to a food facility operated by a school district, county office of education, or community college district if the district or office elects to be regulated by the food safety program of the city, county, or city and county in which the school district, county office of education, or community college district is located.

(*l*) For purposes of this section, the following definitions apply:

(1) ''Food safety program'' means any city, county, or city and county program that requires, at a minimum, either of the following:

(A) The training of one or more individuals, whether denominated as ''owners,'' ''managers,'' ''handlers,'' or otherwise, relating in any manner to food safety issues.

(B) Individuals to pass a food safety certification examination.

(2) ''Food handler program'' means any city, county, or city and county program that requires that all or a substantial portion of the employees of a food facility who are involved in the preparation, storage, service, or handling of food products to engage in food safety training or pass a food safety certification examination, or both.

(m) (1) Any provisions of a food safety program in effect prior to January 1, 1999, that require training or a certification examination, or

both, shall be deemed to satisfy the requirements of this chapter until January 1, 2001, at which time these provisions shall fully conform with the requirements of this chapter. However, all provisions of a food safety program in effect prior to January 1, 1999, that do not pertain to training or a certification program shall conform with the requirements of this chapter by January 1, 2000.

(2) On and after January 1, 1999, a food safety program that was not in effect prior to that date may not be enacted, adopted, implemented, or enforced, unless the program fully conforms with the requirements of this chapter.

(n) No city, county, or city and county may enact, adopt, implement, or enforce any requirement that any food facility or any person certified pursuant to this section do any of the following:

(1) Obtain any food safety certificate or other document in addition to the certificate required by this section.

(2) Post, place, maintain, or keep the certificate required by this section other than as specified in subdivision (e).

(3) Pay any fee or other sum as a condition for having a certificate verified, validated, or otherwise processed by the city, county, or city and county.

(o) Certification conferred pursuant to this chapter shall be recognized throughout the state. Nothing in this chapter shall be construed to prohibit any local enforcement agency from implementing or enforcing a food handler program, as defined in paragraph (2) of subdivision (*l*) that took effect prior to January 1, 1998, but only in the form in which the program existed prior to January 1, 1998.

(p) Notwithstanding Section 113935, a violation of this section shall not constitute a misdemeanor, but shall constitute grounds for permit suspension or revocation, in accordance with Article 5 (commencing with Section 113950).

SEC. 2. Section 113830 of the Health and Safety Code is amended to read:

113830. ''Open-air barbecue facility'' means an unenclosed facility for barbecuing food, where the food is prepared out of doors by cooking directly over hot coals, heated lava, hot stones, gas flame, or other method approved by the state department, on equipment suitably designed and maintained for use out of doors, that is operated by a food establishment, temporary food facility, or stationary mobile food preparation unit, that is operated in full compliance with Article 9 (commencing with Section 114185).

SEC. 3. Section 113925 of the Health and Safety Code is amended to read:

113925. (a) Enforcement officers are charged with the enforcement of this chapter and all regulations adopted pursuant to it.

(b) For purposes of enforcement of this chapter, any authorized enforcement officer may, during the facility's hours of operation and other reasonable times, enter, inspect, issue citations to, and secure any sample, photographs, or other evidence from, any food facility, or any facility suspected of being a food facility, for the purpose of enforcing this chapter. If a food facility is operating under an HACCP plan, as defined in Section 113797 and adopted pursuant to Section 114055 or 114056, the enforcement officer may, for the purpose of determining compliance with the plan, secure as evidence any documents, or copies of documents, relating to the facility's adherence to the HACCP plan.

(c) It is a violation of this chapter for any person to refuse to permit entry or inspection, the taking of samples or other evidence, or access to copy any record as authorized by this chapter, or to conceal any samples or evidence, or withhold evidence concerning them.

(d) A written report of the inspection shall be made and a copy shall be supplied or mailed to the owner, manager, or operator of the food facility.

SEC. 4. Section 113996 of the Health and Safety Code is amended to read:

113996. (a) All ready-to-eat foods prepared at the food facility from raw or incompletely cooked animal tissue shall be thoroughly cooked prior to serving. For purposes of this subdivision, food shall be deemed to be thoroughly cooked if it conforms to the following requirements, except as specified in subdivision (b):

(1) Comminuted meat or any food containing comminuted meat shall be heated to a minimum internal temperature of 69 degrees Celsius (157 degrees Fahrenheit), or an optional internal temperature of 68 degrees Celsius (155 degrees Fahrenheit) for 15 seconds.

(2) Eggs and foods containing raw eggs shall be heated to a minimum internal temperature of 63 degrees Celsius (145 degrees Fahrenheit).

(3) Pork shall be heated to a minimum internal temperature of 63 degrees Celsius (145 degrees Fahrenheit) for 15 seconds.

(4) Poultry, comminuted poultry, stuffed fish, stuffed meat, stuffed poultry, and any food stuffed with fish, meat, or poultry shall be heated to a minimum internal temperature of 74 degrees Celsius (165 degrees Fahrenheit).

(b) When foods containing raw or incompletely cooked animal tissue specified in this section are prepared in a microwave oven, they shall be heated at a minimum internal temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) in all parts of the food. During microwaving, the food shall be completely enclosed in a container to retain surface moisture, and periodically stirred or rotated to assure even heat distribution. Upon the completion of microwaving, the enclosed food shall be left standing for a minimum of two minutes to assure

temperature equilibrium. This subdivision does not apply to the heating of ready-to-eat cooked foods or the defrosting of food items.

(c) A ready-to-eat salad dressing or sauce containing a raw or less-than-thoroughly cooked egg as an ingredient, and other ready-to-eat foods made from or containing eggs, comminuted meat, or single pieces of meat (including beef, veal, lamb, pork, poultry, fish, and seafood) that are raw or have not been thoroughly cooked as provided in subdivision (a) may be served if either of the following requirements are met:

(1) The consumer specifically orders that the food be individually prepared less than thoroughly cooked.

(2) The food facility notifies the consumer, orally or in writing, at the time of ordering, that the food is raw or less than thoroughly cooked.

(d) The department shall authorize alternative time and temperature minimum heating requirements to thoroughly cook the foods identified in this section when the food facility or person demonstrates to the department that the alternative heating requirements provide an equivalent level of food safety.

(e) For purposes of this section, ''meat'' means the tissue of animals used as food, including beef, veal, lamb, pork, and other edible animals, except eggs, fish, and poultry, that is offered for human consumption.

(f) It is the intent of the Legislature that the requirements of this section be uniformly enforced. The department shall train and provide guidance to local health departments to promote uniform enforcement of the requirements specified in this section.

SEC. 5. Section 113998 is added to the Health and Safety Code, to read:

113998. (a) Whenever any potentially hazardous food, as defined in Section 113845, that has been prepared, cooked, and cooled by a food facility is thereafter reheated by that food facility for hot holding, it shall be reheated to a minimum internal temperature of 74 degrees Celsius (165 degrees Fahrenheit).

(b) Any potentially hazardous ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least 60 degrees Celsius (140 degrees Fahrenheit) for hot holding. A minimum temperature shall not be required if the food described in this subdivision is prepared for immediate service.

SEC. 6. Section 114090 of the Health and Safety Code is amended to read:

114090. (a) All utensils and equipment shall be scraped, cleaned, or sanitized as circumstances require.

(b) All food establishments in which food is prepared or in which multiservice kitchen utensils are used shall have a sink with at least three

compartments with two integral metal drainboards. Additional drainage space that is not necessarily attached to the sink may be provided. The sink compartments and drainage facilities shall be large enough to accommodate the largest utensil or piece of equipment to be cleaned therein. A one-compartment or two-compartment sink that is in use on January 1, 1996, may be continued in use until replaced. The enforcement officer may approve the continued use of a one-compartment or two-compartment sink even upon replacement if the installation of a three-compartment sink would not be readily achievable and where other approved sanitation methods are used.

(c) All food establishments in which multiservice consumer utensils are used shall clean the utensils in one of the following ways:

(1) Handwashing of utensils using a three-compartment metal sink with dual integral metal drainboards where the utensils are first washed by hot water and a cleanser until they are clean, then rinsed in clear, hot water before being immersed in a final warm solution meeting the requirements of Section 114060.

(2) Machine washing of utensils in machines using a hot water or chemical sanitizing rinse shall meet or be equivalent to sanitation standards approved pursuant to Section 114065 and shall be installed and operated in accordance with those standards. The machines shall be of a type, and shall be installed and operated, as approved by the department. The velocity, quantity, and distribution of the wash water, type and concentration of detergent used therein, and the time the utensils are exposed to the water, shall be sufficient to clean the utensils.

(3) A two-compartment metal sink, having metal drainboards, equipped for hot water sanitization, that is in use on January 1, 1985, may be continued in use until replaced.

(4) Other methods may be used after approval by the department.

(d) Hot and cold water under pressure shall be provided through a mixing valve to each sink compartment in all food establishments constructed on or after January 1, 1985.

(e) All utensil washing equipment, except undercounter dish machines, shall be provided with two integral metal drainboards of adequate size and construction. One drainboard shall be attached at the point of entry for soiled items and one shall be attached at the point of exit for cleaned and sanitized items. Where an undercounter dish machine is used, there shall be two metal drainboards, one for soiled utensils and one for clean utensils, located adjacent to the machine. The drainboards shall be sloped and drained to an approved waste receptor. This requirement may be satisfied by using the drainboards appurtenant to sinks as required in subdivision (b) and paragraph (1) of subdivision (c), if the facilities are located adjacent to the machine.

(f) The handling of cleaned and soiled utensils, equipment, and kitchenware shall be undertaken in a manner that will preclude possible contamination of cleaned items with soiled items.

(g) All utensils, display cases, windows, counters, shelves, tables, refrigeration units, sinks, dishwashing machines, and other equipment or utensils used in the preparation, sale, service, and display of food shall be made of nontoxic, noncorrosive materials, shall be constructed, installed, and maintained to be easily cleaned, and shall be kept clean and in good repair.

(h) Utensils and equipment shall be handled and stored so as to be protected from contamination. Single-service utensils shall be obtained only in sanitary containers or approved sanitary dispensers, stored in a clean, dry place until used, handled in a sanitary manner, and used once only.

(i) Equipment food-contact surfaces and utensils shall be cleaned and sanitized as follows:

(1) Each time there is a change in processing between types of animal products except when products, are handled in the following order: any cooked ready-to-eat products first; raw beef and lamb products second; raw fish products third; and raw pork or poultry products last.

(2) Each time there is a change from working with raw foods of animal origin to working with ready-to-eat foods.

(3) Between uses with raw fruits or vegetables and with potentially hazardous food.

(4) Before each use of a food temperature-measuring device.

(5) At any time during the food handling operation when contamination may have occurred.

(j) (1) Except as provided in paragraphs (2) and (3) of this subdivision, if used with potentially hazardous food, equipment food-contact surfaces and utensils shall be cleaned and sanitized throughout the day, at least every four hours.

(2) Equipment food-contact surfaces and utensils may be cleaned and sanitized less frequently than every four hours if the utensils and equipment are used to prepare food in a refrigerated room, at or below 13 degrees Celsius (55 degrees Fahrenheit), and the utensils and equipment are cleaned and sanitized at least every 24 hours.

(3) Equipment food-contact surfaces and utensils may be cleaned and sanitized less frequently than every four hours if the enforcement agency approves the cleaning schedule utilized based on a consideration of the following factors:

(A) Characteristics of the equipment and its use.

(B) The type of food involved.

(C) The amount of food residue accumulation.

(D) The temperature at which the food is maintained during the operation and the potential for the rapid and progressive growth of infectious or toxigenic microorganisms that may cause food infections or food intoxications.

(k) Nonfood contact surfaces of equipment shall be cleaned at a frequency necessary to prevent accumulation of residue.

SEC. 7. Section 114190 of the Health and Safety Code is amended to read:

114190. Notwithstanding the provisions of this chapter, neither the state department nor any city, county, or city and county shall require the enclosure of an open-air barbecue facility if the appropriate enforcement officer determines that the barbecue facility meets all of the following requirements:

(a) (1) The barbecue facility is operated on the same premises as, in reasonable proximity to, and in conjunction with, a food establishment, temporary food facility, or stationary mobile food preparation unit.

(2) For purposes of this chapter, the permitted food establishment, temporary food facility, or stationary mobile food preparation unit shall be deemed to be the operator of the barbecue facility, and shall be responsible for ensuring that it is operated in full compliance with this chapter.

(b) All food waste and rubbish containing food waste is handled in accordance with the requirements of Section 114035.

(c) The facility is operated in compliance with Articles 6 (commencing with Section 113975) and 7 (commencing with Section 113990), except for Sections 114030, 114045, and 114060.

(d) The multiservice utensils and equipment used in conjunction with the open-air barbecue facility are made of nontoxic materials, are constructed and maintained in a manner so they can be easily cleaned, and are kept clean and in good repair.

(e) Food and beverages served out of doors are dispensed from units approved by the enforcement officer. No other food may be prepared or stored in the out of doors, except for food cooked on the open-air barbecue unit.

(f) (1) Except as otherwise provided in paragraph (2), no live animals, birds, or fowl shall be kept or allowed in an area within 20 feet of any area where food or beverage is prepared, stored, kept, or served.

(2) Paragraph (1) does not prohibit the presence, in any area where food is served to the public, guests, or patrons, of a guide dog, signal dog, or service dog, as defined by Section 54.1 of the Civil Code, accompanied by a totally or partially blind person, deaf person, person whose hearing is impaired, or handicapped person, or dogs accompanied by persons licensed to train guide dogs for the blind pursuant to Chapter

9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code.

(3) Paragraph (1) does not apply to dogs under the control of uniformed law enforcement officers or of uniformed employees of private patrol operators and operators of a private patrol service who are licensed pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, while those employees are acting within the course and scope of their employment as private patrol persons.

(4) Those persons and operators described in paragraphs (2) and (3) are liable for any damage done to the premises or facilities by the dog.

(g) If the barbecue facility is a permanent structure, it is equipped with an impervious and easily cleaned floor surface that extends a minimum of five feet from the open-air barbecue facility on all open sides.

(h) The barbecue facility is located in an area reasonably protected from dust, as determined by the enforcement officer.

(i) The barbecue facility is not operated in, or out of, any motor vehicle or in any area or location that may constitute a fire hazard, as determined by the enforcement officer. For the purposes of this section, a motor vehicle does not include a stationary mobile food preparation unit, as defined in Section 113890.

(j) Sanitary facilities, including, but not limited to, toilet facilities and handwashing facilities shall be available for use within 200 feet of the barbecue facility and shall comply with all provisions of this chapter. Sanitary facilities that do not meet the requirements of this chapter shall not be located closer to the barbecue facility than the sanitary facilities required to be provided by this section.

SEC. 8. Section 114260 of the Health and Safety Code is amended to read:

114260. (a) Mobile food facilities that are limited to the handling of prepackaged nonpotentially hazardous food and produce shall comply with subdivisions (a) to (i), inclusive, of Section 114265.

(b) Mobile food facilities that handle prepackaged potentially hazardous food, whole fish and whole aquatic invertebrates, or the bulk dispensing of nonpotentially hazardous beverages shall comply with subdivisions (a) to (m), inclusive, of Section 114265. For purposes of this section, tamales shall be considered prepackaged if dispensed to the customer in its original, inedible wrapper.

(c) Mobile food facilities that handle any of the following foods shall comply with subdivisions (a) to (t), inclusive, of Section 114265:

(1) Nonprepackaged nonpotentially hazardous food requiring no preparation other than heating, baking, popping, blending, assembly, portioning, or dispensing.

(2) Preparation of nonpotentially hazardous ingredients into a nonpotentially hazardous food.

(3) Hot dogs, cappuccino and other coffee-based or cocoa-based beverages that may contain cream, milk, or similar dairy products, and frozen ice cream bars that meet the requirements of subdivision (b) of Section 114270.

(d) Only those foods described in this section may be prepared or dispensed on a mobile food facility.

(e) Cooking processes, including, but not limited to, barbecuing, broiling, frying, and grilling are not permitted on a mobile food facility.

SEC. 9. Section 114265 of the Health and Safety Code is amended to read:

114265. (a) The name, address, and telephone number of the owner, operator, permittee, business name, or commissary shall be legible, clearly visible, and permanently indicated on at least two sides of the exterior of the mobile food facility. The name shall be in letters at least 8 centimeters (3 inches) high and shall have strokes at least 1 centimeter ($^3/_8$ inch) wide, and shall be of a color contrasting with the mobile food facility exterior. Letters and numbers for address and telephone numbers shall not be less than 2.5 centimeters (one inch) high.

(b) Mobile food facility equipment, including, but not limited to, the interior of cabinet units and compartments, shall be designed so as to, and made of materials that, result in smooth, readily accessible, and easily cleanable surfaces. Unfinished wooden surfaces are prohibited. Construction joints shall be tightly fitted and sealed so as to be easily cleanable. Equipment and utensils shall be constructed of durable, nontoxic materials and shall be easily cleanable.

(c) During operation, no food intended for retail shall be conveyed, held, stored, displayed, or served from any place other than a mobile food facility except for the restocking of product in a manner approved by the enforcement agency.

(d) Notwithstanding subdivision (k), food products remaining after each day's operation shall be stored only in an approved commissary or other approved facility.

(e) During transportation, storage, and operation of a mobile food facility, food, food-contact surfaces, and utensils shall be protected from contamination. Single-service utensils shall be individually wrapped or in sanitary containers or approved sanitary dispensers, stored in a clean, dry place until used, handled in a sanitary manner, and used only once. Food-contact surfaces and utensils shall be cleaned and sanitized in accordance with subdivisions (i), (j), and (k) of Section 114090.

(f) All food displayed, sold, or offered for sale from a mobile food facility shall be obtained from an approved source.

(g) Food condiments shall be protected from contamination and, where available for customer self-service, be prepackaged or available only from approved dispensing devices.

(h) Mobile food facilities shall be operated within 60 meters (200 feet) of approved and readily available toilet and hand washing facilities or as otherwise approved by the enforcement agency to ensure restroom facilities are available to facility employees.

(i) All mobile food facilities shall operate out of a commissary or other approved facility in accordance with Article 12.5 (commencing with Section 114300). Mobile food facilities shall report to the commissary or other approved facility at least once each operating day for cleaning and servicing operations. Mobile food facilities shall be properly stored, cleaned, and serviced at, or within, a commissary or other facility as approved by the enforcement agency so as to provide protection from unsanitary conditions.

(j) Potentially hazardous food shall be maintained at or below 5 degrees Celsius (41 degrees Fahrenheit) or at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times in accordance with Section 113995.

(k) Potentially hazardous food held at or above 60 degrees Celsius (140 degrees Fahrenheit) on a mobile food facility shall be destroyed at the end of the operating day.

(*l*) (1) Potable and wastewater tanks may be constructed so as to be removed from within the approved mobile food facility compartments for refilling and dispensing purposes only. All retail food operations shall cease during removal and replacement of tanks.

(2) All wastewater from a mobile food facility shall be drained to an approved wastewater receptor at the commissary or other approved facility.

(3) Refilling of a potable water tank shall be conducted through an approved and sanitary method.

(4) Storage of any prefilled potable water tank, or empty and clean water tanks, or both, shall be maintained within the cart, or in an approved manner that will protect against contamination.

(m) All new and replacement gas-fired appliances shall meet applicable ANSI standards. All new and replacement electrical appliances shall meet applicable Underwriters Laboratory standards. However, for units subject to Part 2 (commencing with Section 18000) of Division 13, these appliances shall comply with standards prescribed by Sections 18028, 18029.3, and 18029.5.

(n) Bulk beverage dispensers shall only be filled at the commissary or other facility approved by the enforcement agency unless a hand washing sink as described in paragraph (1) of subdivision (p) is provided.

(o) Where nonprepackaged food is handled for display or sale, the mobile food facility shall be equipped with a food compartment that completely encloses all food, food-contact surfaces, and the handling of ready-to-eat food. The opening to the food compartment shall be sized as appropriate to the food handling activity without compromising the intended protection from contamination, and shall be provided with tight-fitting doors that, when closed, protect interior surfaces from dust, debris, insects, and other vermin.

(p) Mobile food facilities, not under a valid public health permit as of January 1, 1997, on which nonprepackaged ready-to-eat food is sold, or offered for sale, shall be constructed and equipped in compliance with all of the following:

(1) A minimum of a one-compartment metal sink, hand washing cleanser and single-service towels in approved dispensers shall be provided. The sink shall be furnished with hot running water that is at least 49 degrees Celsius (120 degrees Fahrenheit) and cold running water that is less than 38 degrees Celsius (101 degrees Fahrenheit) through a mixing-type faucet that permits both hands to be free for washing. The sink shall be large enough to accommodate the cleaning of the largest utensils washed. The sink, hand washing cleanser, and single-service towels shall be located as to be easily accessible and unobstructed for use by the operator in the working area. The minimum water heater capacity shall be one-half gallon.

(2) The potable water tank and delivery system shall be constructed of approved materials, provide protection from contamination, and shall be of a capacity commensurate with the level of food handling activity on the mobile food facility. The capacity of the system shall be sufficient to furnish enough hot and cold water for the following: steamtable, utensil washing and sanitizing, hand washing, and equipment cleaning. At least 18 liters (5 gallons) of water shall be provided exclusively for hand washing. Any water needed for other purposes shall be in addition to the 18 liters (5 gallons) for hand washing.

(3) (i) The wastewater tank or tanks shall have a minimum capacity that is 50 percent greater than the potable water tank or tanks supplying the hand and utensil washing sink. In no case shall this wastewater capacity be less than 28 liters (7.5 gallons).

(ii) Mobile food facilities utilizing ice in the storage, display, or service of food or beverages shall provide an additional minimum wastewater holding tank capacity equal to one-third of the volume of the ice cabinet to accommodate the drainage of ice melt.

(iii) Mobile food facilities equipped with a tank supplying product water for the preparation of a food or beverage shall provide an additional wastewater tank capacity equal to at least 15 percent of this water supply.

(iv) Additional wastewater tank capacity may be required where wastewater production or spillage is likely to occur.

(v) Any connection to a wastewater tank shall preclude the possibility of contaminating any food, food-contact surface, or utensil.

(4) A mobile food facility's potable water tank inlet shall be provided with a connection of a size and type that will prevent its use for any other service and shall be constructed so that backflow and other contamination of the water supply is prevented. Hoses used to fill potable water tanks shall be made of food grade materials and handled in a sanitary manner.

(q) Mobile food facilities selling unpackaged frozen ice cream bars or holding cream, milk, or similar dairy products pursuant to Section 114270 shall be equipped with refrigeration units as described in Section 113860.

(r) Operators of mobile food facilities handling nonprepackaged food shall develop and follow written operational procedures for food handling and the cleaning and sanitizing of food-contact surfaces and utensils. The enforcement agency shall review and approve the procedures prior to implementation and an approved copy shall be kept on the mobile food facility during periods of operation.

(s) All potentially hazardous food shall be prepackaged in an approved food facility except as provided in Sections 114260 and 114270.

(t) Except to the extent that an alternative construction standard is explicitly prescribed by this section, construction standards for mobile food preparation units and stationary mobile food preparation units which are subject to Part 2 (commencing with Section 18000) of Division 13 shall be governed by the provisions of that part.

SEC. 10. Section 114275 of the Health and Safety Code is amended to read:

114275. (a) Mobile food facilities formerly approved as vehicles immediately preceding January 1, 2002, on which approved unpackaged food is sold or offered for sale that operate exclusively on premises wherein approved toilet, hand washing, and utensil washing facilities are readily available and within 60 meters (200 feet) shall be exempt from the requirements of subdivision (p) of Section 114265.

(b) Mobile food facilities as set forth in subdivision (a) that were in operation as of July 1, 1986, need not meet the requirements of this article relating to utensil washing facilities, if an approved supply of gloves or utensils, or both, is maintained on the mobile food facility that would preclude any hand contact with the food products being dispensed.

(c) Mobile food facilities approved prior to January 1, 2002, that are limited to the portioning and dispensing of nonprepackaged,

nonpotentially hazardous food, are exempt from the hand and utensil washing sink requirements of this article, if there is an approved supply of gloves, utensils, or both, on the facility that precludes any hand contact with the food products being dispensed. This exemption shall not apply to the scooping of ice.

SEC. 11. Section 114332.3 of the Health and Safety Code is amended to read:

114332.3. (a) No potentially hazardous food or beverage stored or prepared in a private home may be offered for sale, sold, or given away from a nonprofit charitable temporary food facility. Potentially hazardous food shall be prepared in a food establishment or on the premises of a nonprofit charitable temporary food facility.

(b) All food and beverage shall be protected at all times from unnecessary handling and shall be stored, displayed, and served so as to be protected from contamination.

(c) Potentially hazardous food and beverage shall be maintained at or below 7 degrees Celsius (45 degrees Fahrenheit) or at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times.

(d) Ice used in beverages shall be protected from contamination and shall be maintained separate from ice used for refrigeration purposes.

(e) All food and food containers shall be stored off the floor on shelving or pallets located within the facility.

(f) Smoking is prohibited in nonprofit charitable temporary food facilities.

(g) (1) Except as provided in paragraph (2), live animals, birds, or fowl shall not be kept or allowed in nonprofit charitable temporary food facilities.

(2) Paragraph (1) does not prohibit the presence, in any room where food is served to the public, guests, or patrons, of a guide dog, signal dog, or service dog, as defined by Section 54.1 of the Civil Code, accompanied by a totally or partially blind person, deaf person, person whose hearing is impaired, or handicapped person, or dogs accompanied by persons licensed to train guide dogs for the blind pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code.

(3) Paragraph (1) does not apply to dogs under the control of uniformed law enforcement officers or of uniformed employees of private patrol operators and operators of a private patrol service who are licensed pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, while these employees are acting within the course and scope of their employment as private patrol persons.

(4) The persons and operators described in paragraphs (2) and (3) are liable for any damage done to the premises or facilities by the dog.

(5) The dogs described in paragraphs (2) and (3) shall be excluded from food preparation and utensil wash areas. Aquariums and aviaries shall be allowed if enclosed so as not to create a public health problem.

(h) All garbage shall be disposed of in a sanitary manner.

(i) Employees preparing or handling food shall wear clean clothing and shall keep their hands clean at all times.

SEC. 12. Section 114332.5 of the Health and Safety Code is amended to read:

114332.5. Open-air barbecue facilities may be operated adjacent to nonprofit charitable temporary food facilities, and shall be subject to the requirements of Article 9 (commencing with Section 114185).

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.

CHAPTER 370

An act to add Section 105340 to the Health and Safety Code, and to amend Section 144.7 of the Labor Code, relating to sharps injury prevention.

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 105340 is added to the Health and Safety Code, to read:

105340. The Department of Health Services shall maintain a Sharps Injury Control program that shall do all of the following:

(a) Maintain a continuously updated list of existing needleless systems and needles with engineered sharps injury protection, which shall be made available to assist facilities as provided by Section 144.7 of the Labor Code.

(b) Solicit voluntary submission of data by health care institutions regarding the effectiveness of needleless systems and needles with engineered sharps injury protection.

(c) Provide assistance to industry and the Division of Occupational Safety and Health to further compliance with occupational safety and health standards related to the use of needleless systems and needles with engineered sharps injury protection.

SEC. 2. Section 144.7 of the Labor Code is amended 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 injury 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 injury 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 injury 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 injury 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. 3. It is the intent of the Legislature to appropriate three hundred thousand dollars ($300,000) from the General Fund to implement this act.

CHAPTER 371

An act to amend Section 5241 of the Family Code, relating to child support.

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 5241 of the Family Code is amended to read:

5241. (a) An employer who willfully fails to withhold and forward support pursuant to a currently valid assignment order entered and served upon the employer pursuant to this chapter is liable to the obligee for the amount of support not withheld, forwarded, or otherwise paid to the obligee, including any interest thereon.

(b) If an employer withholds support as required by the assignment order, the obligor shall not be held in contempt or subject to criminal prosecution for nonpayment of the support that was withheld by the employer but not received by the obligee. In addition, the employer is liable to the obligee for any interest incurred as a result of the employer's failure to timely forward the withheld support pursuant to an assignment earnings order.

(c) In addition to any other penalty or liability provided by law, willful failure by an employer to comply with an assignment order is

punishable as a contempt pursuant to Section 1218 of the Code of Civil Procedure.

(d) If an employer withholds support, as required by the assignment order, but fails to forward the support to the obligee, the local child support agency shall take appropriate action to collect the withheld sums from the employer. The child support obligee or the local child support agency upon application may obtain an order requiring payment of support by electronic transfer from the employer's bank account if the employer has willfully failed to comply with the assignment order or if the employer has failed to comply with the assignment order on three separate occasions within a 12-month period. Where a court finds that an employer has willfully failed to comply with the assignment order or has otherwise failed to comply with the assignment order on three separate occasions within a 12-month period, the court may impose a civil penalty, in addition to any other penalty required by law, of up to 50 percent of the support amount that has not been received by the obligee.

(e) To facilitate employer awareness, the local support agency shall make reasonable efforts to notify any employer subject to an assignment order pursuant to this chapter of the electronic fund transfer provision and enhanced penalties provided by this act.

(f) Notwithstanding any other provision of law, any penalty payable pursuant to this subdivision shall be payable directly to the obligee. The local child support agency shall not be required to establish or collect this penalty on behalf of the obligee. The penalty shall not be included when determining the income of the obligee for the purpose of determining the eligibility of the obligee for benefits payable pursuant to state supplemental income programs. A court may issue the order requiring payment of support by electronic transfer from the employer's bank account and impose the penalty described in this subdivision, after notice and hearing. This provision shall not be construed to expand or limit the duties and obligations of the Labor Commissioner, as set forth in Section 200 and following of the Labor Code.

CHAPTER 372

An act to add Chapter 1.7 (commencing with Section 120395) to Part 2 of Division 105 of the Health and Safety Code, relating to immunizations.

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Chapter 1.7 (commencing with Section 120395) is added to Part 2 of Division 105 of the Health and Safety Code, to read:

CHAPTER 1.7. MENINGOCOCCAL IMMUNIZATION

120395. (a) The State Department of Health Services shall, no later than April 1, 2002, develop information about meningococcal disease. The information shall include:

(1) Information about meningococcal disease, including symptoms, risks, and treatment.

(2) Notice of the availability, benefits, risks, and limitations of a meningococcus vaccination, with specific information as to those persons at higher risk for the disease.

(b) The department shall make available to each degree-granting public and private postsecondary institution, upon the request of that institution, information developed by the department on meningococcal disease.

(c) The department shall also send an information notice to each school district advising each school district of the availability of information developed by the department, and shall make the information available to any school district upon the request of that school district.

(d) The department may also use the information developed to design and implement a public awareness campaign about meningococcal disease to reach members of the population identified as being at high risk for contracting the disease.

120396. Each degree-granting public postsecondary educational institution that provides on-campus housing in the state shall, beginning with the 2002–03 school year, do all of the following:

(a) Provide information on meningococcal disease developed pursuant to Section 120395 to each incoming freshman who has been accepted for admission to the postsecondary educational institution and who will be residing in on-campus housing. The information shall include a response form with space in which to indicate that the incoming freshman has received the information about meningococcal disease and the availability of the vaccine to prevent one from contracting the disease. The form shall include space for the incoming freshman to indicate whether or not he or she has chosen to receive the vaccination, and a space for his or her signature.

(b) Require each incoming freshman to return to the postsecondary educational institution a form with a response as to whether the person

received the information, and whether or not the person chooses to receive the vaccination.

(c) Maintain the completed forms received from students in accord with the institution's health care records policy.

(d) Nothing in this section shall be construed to require the postsecondary educational institution to provide the vaccination to the students.

120397. Each degree-granting private postsecondary educational institution that provides on-campus housing in the state shall adopt a policy to notify all incoming students about meningococcal disease and the availability of the vaccination, beginning with the 2002–03 school year. The Legislature encourages those institutions to consider all of the following in adopting the policy:

(a) Providing information on meningococcal disease developed pursuant to Section 120395 to each prospective student who has been accepted for admission to the postsecondary institution prior to the student's matriculation into the institution. The information may include a response form with space in which to indicate that the prospective student has received the information about meningococcal disease and the availability of the vaccine to prevent one from contracting the disease. The form shall include space for the prospective student to indicate whether or not he or she has chosen to receive the vaccination, and a space for his or her signature.

(b) Requiring each prospective student to return to the postsecondary educational institution a form with a response as to whether or not the person received the information, and whether or not the person chooses to receive the vaccination.

(c) Maintaining the completed forms received from students in accordance with the institution's health care records policy.

(d) Nothing in this section shall be construed to require the postsecondary educational institution to provide the vaccination to students.

120398. Each public and private postsecondary educational institution shall maintain the confidentiality of information obtained pursuant to Section 120396 or 120397 in the same manner as other confidential student information is maintained by the institution. Each institution is subject to civil action and criminal penalties for the wrongful disclosure of the information, in accordance with other provisions of law.

120399. No provision of this chapter shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make applicable the provision of the chapter.

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.

CHAPTER 373

An act to amend Sections 47025, 78636, and 78674 of, to add Sections 1109, 47005, 47005.1, 47005.2, 47005.3, 47022, 47022.1, 47022.2, 47022.3, 47022.4, 47022.5, 47022.6, and 47022.7 to, and to repeal Section 103.5 of, the Food and Agricultural Code, relating to marketing agricultural products.

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 103.5 of the Food and Agricultural Code is repealed.

SEC. 2. Section 1109 is added to the Food and Agricultural Code, to read:

1109. Procedures, forms, and guidelines implementing environmental grant programs of the department are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 3. Section 47005 is added to the Food and Agricultural Code, to read:

47005. An enforcing officer may enter and inspect any place or conveyance where products are produced, stored, packed, delivered for shipment, loaded, shipped, transported, or sold pertaining to a certified producer's certificate over which they have jurisdiction.

SEC. 4. Section 47005.1 is added to the Food and Agricultural Code, to read:

47005.1. An enforcing officer may inspect all products, containers, and equipment found in any place or conveyance to determine compliance with this chapter or the regulations adopted thereunder. The enforcing officer may also take representatives samples of products and

containers, which may be subject to any method of inspection or testing as deemed necessary.

SEC. 5. Section 47005.2 is added to the Food and Agricultural Code, to read:

47005.2. An enforcing officer may seize and hold as evidence all or any part of any container, pack, load, bulk lot, consignment or shipment of products which is packed, delivered for shipment, loaded, shipped, transported, or sold to secure the conviction of the party the enforcing officer knows or believes has violated or is violating any provision of this chapter or the regulations adopted thereunder.

SEC. 6. Section 47005.3 is added to the Food and Agricultural Code, to read:

47005.3. Any evidence that is seized under the authority of this chapter or the regulations adopted thereunder by an enforcing officer in any county may be admitted into evidence in any action taken by any other county.

SEC. 7. Section 47022 is added to the Food and Agricultural Code, to read:

47022. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, cause to be transported, or sell any products in bulk, or in any container or subcontainer, unless such products conform to the provisions of this chapter or the regulations adopted thereunder.

SEC. 8. Section 47022.1 is added to the Food and Agricultural Code, to read:

47022.1. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to deceptively prepare, pack, place, deliver for shipment, load, ship, transport, or sell any products.

SEC. 9. Section 47022.2 is added to the Food and Agricultural Code, to read:

47022.2. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to mislabel any products, or place or have any false or misleading statement or designation of quality, grade, trademark, or trade name, on any wrapper or container, or on the label or lining of any container of any product, or on any placard that is used in connection with, or which has reference to, any products, bulk lot, bulk load, load, arrangement, or display of products.

SEC. 10. Section 47022.3 is added to the Food and Agricultural Code, to read:

47022.3. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to falsify

any documents or to make any statement, representation, or assertion orally, by public outcry, proclamation, or in writing, or by any other manner or means whatever, that concerns the quality, size, maturity, condition, or any other matter that relates to products which is false, deceptive, or misleading in any particular.

SEC. 11. Section 47022.4 is added to the Food and Agricultural Code, to read:

47022.4. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to remove or dispose any products, or their containers to which any warning tag or notice has been affixed by an enforcing officer, or to remove the warning tag or notice from the place where it is affixed, except under a written permit to do so from an enforcing officer or under his or her specific direction.

SEC. 12. Section 47022.5 is added to the Food and Agricultural Code, to read:

47022.5. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to refuse to submit any container, subcontainer, load, or display of products to the inspection of an enforcing officer, or to refuse to stop any vehicle which contains products for the purpose of inspection by an enforcing officer.

SEC. 13. Section 47022.6 is added to the Food and Agricultural Code, to read:

47022.6. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to refuse to submit to inspection by an enforcing officer of any property used in the sales, storage, or production of agricultural products.

SEC. 14. Section 47022.7 is added to the Food and Agricultural Code, to read:

47022.7. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to alter in any respect any certified producer's certificate, any certified farmers' market certificate, any notice of violation, report, statement, or other document that is referred to in this chapter, which is issued by an enforcing officer.

SEC. 15. Section 47025 of the Food and Agricultural Code is amended to read:

47025. (a) In lieu of prosecution, but not precluding suspension or revocation of certified producer's certificates or certified farmers' market certificates, the secretary or the county commissioner may levy a civil penalty against a person who violates this chapter or any regulation implemented pursuant to this chapter. Actions to administer administrative civil penalties, suspensions, or both, against a certified producer may be made by the county agricultural commissioner who

either issued the certified producer's certificate or issued the violation, regardless of the county or counties where the violation occurred, or where the certified producer's certificate originated. The secretary may take action to administer administrative civil penalties, suspensions, or both, against a certified producer, regardless of the county or counties where the violation occurred, or where the certified producer's certificate originated.

(b) Civil penalties shall be levied in proportion to the violation, measured as either ''serious,'' ''moderate,'' or ''minor.''

(1) ''Serious'' violations are repeat or intentional violations, punishable by a civil penalty of not less than four hundred one dollars ($401) and up to a maximum of one thousand dollars ($1,000) per violation.

(2) ''Moderate'' violations are repeat violations or violations that are not intentional, punishable by a civil penalty of not less than one hundred fifty-one dollars ($151), but not more than four hundred dollars ($400) per violation.

(3) ''Minor'' violations are violations that are procedural in nature, punishable by a civil penalty of not less than fifty dollars ($50), but not more than one hundred fifty dollars ($150) per violation.

(c) Before a civil penalty is levied pursuant to this section, the person charged with the violation shall receive written notice of the proposed action including the nature of the violation and the amount of the proposed penalty. The person shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or if the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(d) If the person, upon whom the commissioner levied a civil penalty, requested and appeared at a hearing, the person may appeal the commissioner's decision to the secretary within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the secretary.

(2) The appellant and the commissioner, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the secretary, may present the record of the hearing and a written argument to the secretary stating the ground for affirming, modifying, or reversing the commissioner's decision.

(3) The secretary may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the secretary.

(5) The secretary shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the secretary finds substantial evidence in the record to support the commissioner's decision, the secretary shall affirm the decision.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the secretary may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the secretary's guidelines for imposing civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the secretary shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (c). A copy of the secretary's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing with the commissioner pursuant to a penalty assessed under subdivision (c) may not file an appeal to the secretary pursuant to this subdivision.

(9) Review of a decision of the secretary may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) After the exhaustion of the appeal and review of procedures provided in this section, the commissioner, or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty, and, if applicable, a copy of any decision of the secretary, or his or her authorized representative, rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the

performance of any official service required in connection with the entry of judgment pursuant to this section.

(f) In addition to the civil penalties prescribed in subdivision (b), the appellant may be required to cover the cost of the administrative hearing unless the decision of the secretary or county agricultural commissioner is overturned.

(g) ''Person,'' as used in this section, means any applicant for a certified producers' certificate or certified farmers' market certificate, producer of agricultural products, certified producer, family member or employees of a certified producer, certified farmers' market manager, or certified farmers' market operator engaged or involved in the direct marketing of agricultural products at a certified farmers' market pursuant to this chapter.

SEC. 16. Section 78636 of the Food and Agricultural Code is amended to read:

78636. (a) ''Tomatoes'' means all tomatoes that are produced for commercial purposes and are handled within the state in fresh form, except cherry tomatoes, and tomatoes grown in a greenhouse.

(b) For purposes of this section, ''tomatoes grown in a greenhouse'' means tomatoes grown in a fixed steel structure using irrigation and climate control, in an artificial medium that substitutes for soil.

SEC. 17. Section 78674 of the Food and Agricultural Code is amended to read:

78674. The commission may solicit and accept contributions of, or match private, state, or federal funds, and employ or make contributions of funds to other persons or state or federal agencies for purposes of promoting and maintaining the tomato industry.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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.

CHAPTER 374

An act to add Chapter 1.1 (commencing with Section 120381) to Part 2 of Division 105 of the Health and Safety Code, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. This act shall be known, and may be cited as, the Meningococcal Disease Strategic Prevention Act of 2001.

SEC. 2. (a) The Legislature finds and declares:

(1) Meningococcal disease is a serious and sometimes fatal disease that most often affects children and young adults.

(2) There are some strains of meningococcal disease that can be prevented through the use of vaccines that are currently available.

(b) It is the intent of the Legislature that:

(1) The State Department of Health Services develop a strategic plan to address ways to prevent the spread of this devastating disease.

(2) Local public health agencies and postsecondary educational institutions are encouraged to periodically sponsor meningococcal disease education and vaccination days in local communities.

(3) In making the vaccine accessible it is not the intent of the Legislature that the vaccine be purchased with public funds at this time, although purchase of the vaccine with public funds may be a recommendation of the strategic plan.

SEC. 3. Chapter 1.1 (commencing with Section 120381) is added to Part 2 of Division 105 of the Health and Safety Code, to read:

CHAPTER 1.1. MENINGOCOCCAL DISEASE STRATEGIC PREVENTION ACT OF 2001

120381. (a) The State Department of Health Services, in consultation with the State Department of Education, local public health agencies, and postsecondary educational institutions, shall develop a Meningococcal Disease Strategic Prevention Plan.

(b) The plan shall include, but not be limited to, a review of all of the following:

(1) The current scientific literature on meningococcal disease.

(2) Experiences of other state and local governmental jurisdictions in the prevention of meningococcal disease and in prevention programs for similarly infectious diseases, such as tuberculosis and hepatitis.

(3) The possible role of age-specific vaccination programs for meningococcal disease.

(4) The availability of vaccines for meningococcal disease.

(5) The application and roles of other governmental programs.

(6) Current health plan coverages and other health insurance products.

(c) The victims of meningococcal disease and their families shall be involved and have input in the development of the plan.

(d) The department shall encourage public and private medical entities to cooperate with each other to make meningococcus vaccines and vaccinations accessible and provide any currently available vaccines to families that desire that their children be inoculated.

(e) The plan shall be completed and made available to the Legislature on or before June 30, 2002.

SEC. 4. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the State Department of Health Services for the purpose of developing the Meningococcal Disease Strategic Prevention Plan pursuant to Chapter 1.1 (commencing with Section 120381) of Part 2 of Division 105 of the Health and Safety Code.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enable the Meningococcal Disease Strategic Prevention Plan required by this act to be developed for the protection of public safety as soon as possible, it is necessary that this act go into immediate effect.

CHAPTER 375

An act to add Section 308.1 to the Penal Code, relating to tobacco.

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 308.1 is added to the Penal Code, to read:

308.1. (a) Notwithstanding any other provision of law, no person shall sell, offer for sale, distribute, or import any tobacco product commonly referred to as ''bidis'' or ''beedies,'' unless that tobacco product is sold, offered for sale, or intended to be sold in a business establishment that prohibits the presence of persons under 18 years of age on its premises.

(b) For purposes of this section, ''bidis'' or ''beedies'' means a product containing tobacco that is wrapped in temburni leaf (diospyros melanoxylon) or tendu leaf (diospyros exculpra).

(c) Any person who violates this section is guilty of a misdemeanor or subject to a civil action brought by the Attorney General, a city attorney, county counsel, or district attorney for an injunction and a civil penalty of up to two thousand dollars ($2,000) per violation. This subdivision does not affect any other remedies available for a violation of this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 376

An act to amend Section 22952 of, and to add Section 22962 to, the Business and Professions Code, to amend Section 118950 of the Health and Safety Code, and to amend Section 308 of, and to add Section 308.3 to, the Penal Code, relating to tobacco products.

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 22952 of the Business and Professions Code is amended to read:

22952. On or before July 1, 1995, the State Department of Health Services shall do all of the following:

(a) Establish and develop a program to reduce the availability of tobacco products to persons under 18 years of age through the enforcement activities authorized by this division.

(b) Establish requirements that retailers of tobacco products post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under 18 years of age is illegal and subject to penalties. The notice shall also state that the law requires that all persons selling tobacco products check the identification of any purchaser of tobacco products who reasonably appears to be under 18 years of age. The warning signs shall include a toll-free telephone number to the state department for persons to report unlawful sales of tobacco products to minors.

(c) Provide that primary responsibility for enforcement of this division shall be with the state department. In carrying out its enforcement responsibilities, the state department shall conduct random, onsite sting inspections at retail sites and shall enlist the assistance of persons that are 15 and 16 years of age in conducting these enforcement activities. The state department may conduct onsite sting inspections in response to public complaints or at retail sites where violations have previously occurred, and investigate illegal sales of tobacco products to minors by telephone, mail, or the Internet. Participation in these enforcement activities by a person under 18 years of age shall not constitute a violation of subdivision (b) of Section 308 of the Penal Code for the person under 18 years of age, and the person under 18 years of age is immune from prosecution thereunder, or under any other provision of law prohibiting the purchase of these products by a person under 18 years of age.

(d) In accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the state department shall adopt and publish guidelines for the use of persons under 18 years of age in inspections conducted pursuant to subdivision (c) that shall include, but not be limited to, all of the following:

(1) The state department and any local law enforcement agency under an enforcement delegation contract with the department may use persons under 18 years of age who are 15 or 16 years of age in random inspections to determine if sales of cigarettes or other tobacco products are being made to persons under 18 years of age.

(2) A photograph or video recording of the person under 18 years of age shall be taken prior to each inspection or shift of inspections and retained by the department or the local law enforcement agency under an enforcement delegation contract with the department for purposes of verifying appearances.

(3) The state department or a local law enforcement agency under an enforcement delegation contract with the department may use video recording equipment when conducting the inspections to record and document illegal sales or attempted sales.

(4) The person under 18 years of age, if questioned about his or her age, need not state his or her actual age but shall present a true and correct identification if verbally asked to present it. Any failure on the part of the person under 18 years of age to provide true and correct identification, if verbally asked for it, shall be a defense to any action pursuant to this section.

(5) The person under 18 years of age shall be under the supervision of a regularly employed peace officer during the inspection.

(6) All persons under 18 years of age used in this manner by the department or a local law enforcement agency under an enforcement

delegation contract with the department shall display the appearance of a person under 18 years of age. It shall be a defense to any action under this division that the person's appearance was not that which could be generally expected of a person under 18 years of age, under the actual circumstances presented to the seller of the cigarettes or other tobacco products at the time of the alleged offense.

(7) Following the completion of the sale, the peace officer accompanying the person under 18 years of age shall reenter the retail establishment and inform the seller of the random inspection and following an attempted sale, the department shall notify the retail establishment of the inspection.

(8) Failure to comply with the procedures set forth in this subdivision shall be a defense to any action brought pursuant to this section.

(e) Be responsible for ensuring and reporting the state's compliance with Section 1926 of Title XIX of the federal Public Health Service Act (42 U.S.C. 300x-26) and any implementing regulations adopted in relation thereto by the United States Department of Health and Human Services. A copy of this report shall be made available to the Governor and the Legislature.

(f) Provide that any civil penalties imposed pursuant to Section 22958 shall be enforced against the owner or owners of the retail business and not the employees of the business.

SEC. 2. Section 22962 is added to the Business and Professions Code, to read:

22962. (a) For purposes of this section, ''self-service display'' means the open display of tobacco products in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer.

(b) Except as permitted in subdivision (b) of Section 22960, it is unlawful for any person engaged in the retail sale of tobacco products to sell, offer for sale, or display for sale cigarettes by self-service display. Any person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(c) The Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this section.

(d) This section does not preempt or otherwise prohibit the adoption of a local standard that imposes greater restrictions on the access to tobacco products than the restrictions imposed by this section. To the extent that there is an inconsistency between this section and a local standard that imposes greater restrictions on the access to tobacco products, the greater restriction on the access to tobacco products in the local standard shall prevail.

SEC. 3. Section 118950 of the Health and Safety Code is amended to read:

118950. (a) The Legislature hereby finds and declares the following:

(1) Smoking is the single most important source of preventable disease and premature death in California.

(2) Smoking is responsible for one-quarter of all death caused by fire.

(3) Tobacco-related disease places a tremendous financial burden upon the persons with the disease, their families, the health care delivery system, and society as a whole.

(4) Despite laws in at least 44 states prohibiting the sale of tobacco products to minors, each day 3,000 children start using tobacco products in this nation. Children under the age of 18 years consume 947 million packages of cigarettes in this country yearly.

(5) The earlier a child begins to use tobacco products, the more likely it is that the child will be unable to quit.

(6) More than 60 percent of all smokers begin smoking by the age of 14 years, and 90 percent begin by the age of 19 years.

(7) Use of smokeless tobacco products among minors in this state is increasing.

(8) Smokeless tobacco or chewing tobacco is harmful to the health of individuals and may cause gum disease, mouth or oral cancers, increased tooth decay and leukoplakia.

(9) Tobacco product advertising and promotion are an important cause of tobacco use among children. More money is spent advertising and promoting tobacco products than any other consumer product.

(10) Distribution of tobacco product samples and coupons is a recognized source by which minors obtain tobacco products, beginning the addiction process.

(11) It is the intent of the Legislature that keeping children from beginning to use tobacco products in any form and encouraging all persons to quit tobacco use shall be among the highest priorities in disease prevention for the State of California.

(b) It is unlawful for any person, agent, or employee of a person in the business of selling or distributing smokeless tobacco or cigarettes from engaging in the nonsale distribution of any smokeless tobacco or cigarettes to any person in any public building, park or playground, or on any public sidewalk, street, or other public grounds, or on any private property that is open to the general public.

(c) For purposes of this section:

(1) ''Nonsale distribution'' means to give smokeless tobacco or cigarettes to the general public at no cost, or at nominal cost, or to give coupons, coupon offers, or rebate offers for smokeless tobacco or cigarettes to the general public at no cost or at nominal cost. Distribution of tobacco products, coupons, coupon offers, or rebate offers in connection with the sale of another item, including tobacco products,

cigarette lighters, magazines, or newspapers shall not constitute nonsale distribution.

(2) ''Smokeless tobacco'' means (A) a loose or flat, compressed cake form of tobacco that may be chewed or held in the mouth or (B) a shredded, powdered, or pulverized form of tobacco that may be inhaled through the nostrils, chewed, or held in the mouth.

(3) ''Public building, park, playground, sidewalk, street, or other public grounds'' means any structure or outdoor area that is owned, operated, or maintained by any public entity, including, but not limited to: city and county streets and sidewalks, parade grounds, fair grounds, public transportation facilities and terminals, public reception areas, public health facilities, public recreational facilities, and public office buildings.

(4) ''Private property that is open to the general public'' means any structure or outdoor area that is owned, operated, or maintained by any private entity and that is open for entry or use by the general public, whether or not a fee or charge is imposed for entry or use.

(d) Any person who violates this section shall be liable for a civil penalty of not less than two hundred dollars ($200) for one act, five hundred dollars ($500) for two acts, and one thousand dollars ($1,000) for each subsequent act constituting a violation. Each distribution of a single package, coupon, coupon offer, or rebate offer to an individual member of the general public in violation of this section shall be considered a separate violation.

(e) Neither this section nor any other provision of law shall invalidate an ordinance of, or prohibit the adoption of an ordinance by, a city or county regulating distribution of smokeless tobacco or cigarette samples within its boundaries that is more restrictive than this section. An ordinance that imposes greater restrictions on the sale or distribution of tobacco than this section shall govern, to the extent of any inconsistency between it and this section.

(f) This section does not apply to any public building, park, playground, sidewalk, street, or other public grounds, or any private property that is open to the general public where minors are prohibited by law. This section also shall not apply to any public building, park, playground, sidewalk, street, or other public grounds open to the general public and leased for private functions where minors are denied access by a peace officer or licensed security guard on the premises.

(g) This section does not apply to any private property that is open to the general public where minors are denied access to a separate nonsale distribution area by a peace officer or licensed security guard stationed at the entrance of the separate nonsale distribution area and the separate nonsale distribution area is enclosed so as to prevent persons outside the

separate nonsale distribution area from seeing the nonsale distribution unless they undertake unreasonable efforts to see inside the area.

SEC. 4. Section 308 of the Penal Code is amended to read:

308. (a) Every person, firm, or corporation which knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars ($200) for the first offense, five hundred dollars ($500) for the second offense, and one thousand dollars ($1,000) for the third offense.

Notwithstanding Section 1464 or any other provision of law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).

Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the Armed Forces.

For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by minors.

(b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco,

or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars ($75) or 30 hours of community service work.

(c) Every person, firm, or corporation which sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952 of the Business and Professions Code, and any person failing to do so shall upon conviction be punished by a fine of ten dollars ($10) for the first offense and fifty dollars ($50) for each succeeding violation of this provision, or by imprisonment for not more than 30 days.

(d) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

(e) It is the Legislature's intent to regulate the subject matter of this section. As a result, no city, county, or city and county shall adopt any ordinance or regulation inconsistent with this section.

(f) Notwithstanding any other provision of this section, the Director of Corrections may sell or supply tobacco and tobacco products, including cigarettes and cigarette papers, to any person confined in any institution or facility under his or her jurisdiction who has attained the age of 16 years, if the parent or guardian of the person consents thereto, and may permit smoking by the person in any institution or facility. No officer or employee of the Department of Corrections shall be considered to have violated this section by any act authorized by this subdivision.

SEC. 5. Section 308.3 is added to the Penal Code, to read:

308.3. (a) A person, firm, corporation, or business may not manufacture for sale, distribute, sell, or offer to sell any cigarette, except in a package containing at least 20 cigarettes. A person, firm, corporation, or business may not manufacture for sale, distribute, sell, or offer to sell any roll-your-own tobacco, except in a package containing at least 0.60 ounces of tobacco.

(b) As used in subdivision (a), ''cigarette'' means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of, or contains any of, the following:

(1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

(2) Tobacco, in any form, that is functional in the product, that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

(3) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler,

or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in this subdivision.

(c) Any person, firm, corporation, or business that violates this section is liable for an infraction, or in an action brought by the Attorney General, a district attorney, a county counsel, or a city attorney for a civil penalty of two hundred dollars ($200) for the first violation, five hundred dollars ($500) for the second violation, and one thousand dollars ($1,000) for each subsequent act constituting a violation.

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.

CHAPTER 377

An act to amend Sections 121890, 121920, and 121940 of, and to add Sections 121881, 121896, 121906, 121907, 121916, 121917, 121918, 121919, 121921, and 121945 to, the Health and Safety Code, relating to dogs.

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 121881 is added to the Health and Safety Code, to read:

121881. For purposes of this chapter, ''guard dog'' or ''attack dog'' means any dog trained to guard, protect, patrol, or defend any premises, area, or yard, or any dog trained as a sentry or to protect, defend, or guard any person or property, or any dog such as a schutzhund or any similar classification.

SEC. 2. Section 121890 of the Health and Safety Code is amended to read:

121890. For purposes of this chapter, ''tracker dog'' means a dog trained to work with a handler in searching facilities for burglary suspects and other intruders.

SEC. 3. Section 121896 is added to the Health and Safety Code, to read:

121896. For purposes of this chapter, ''trainer'' means any person who engages in the practice of training any attack, guard, or sentry dog.

SEC. 4. Section 121906 is added to the Health and Safety Code, to read:

121906. ''Person'' means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.

SEC. 5. Section 121907 is added to the Health and Safety Code, to read:

121907. ''Owner'' means any person who has purchased, or obtained legal custody of, an attack, guard, or sentry dog.

SEC. 6. Section 121916 is added to the Health and Safety Code, to read:

121916. (a) Any person or owner of an attack, guard, or sentry dog that operates or maintains a business to sell, rent, or train an attack, guard, or sentry dog shall obtain a permit from the local public agency or private society or pound contracting with the local public agency for animal care or protection services.

(b) Each local agency shall adopt and implement a permit program for the administration of subdivision (a) by the local agency or private society or pound contracting with the local public agency for animal care or protection services. A local agency may charge a fee for the issuance or renewal of a permit required under this section. The fee shall not exceed the actual costs for the implementation of the permit program.

(c) For purposes of this section, ''local public agency'' means a city, county, or city and county.

SEC. 7. Section 121917 is added to the Health and Safety Code, to read:

121917. (a) An applicant, when applying for a permit pursuant to Section 121916, shall furnish the local public agency with a list of the types of animals to be kept or used for any purpose, with the estimated maximum number of animals to be kept.

(b) An applicant shall furnish the local public agency with the name and the telephone number of a responsible person who has access to the animals and who can be reached during an emergency.

(c) An applicant shall notify the local public agency when any animal for which a permit is required is kept or maintained.

(d) The local public agency may establish the maximum number of animals to be kept or maintained on the premises.

(e) Any permittee shall report in writing any change in address, ownership, or management to the local public agency at least 15 days prior to any change.

(f) Any permittee shall maintain a register of the name and address of any person from whom any animal is received and to whom any animal

is sold, traded, or given. This list shall be available to the local public agency representative upon demand.

SEC. 8. Section 121918 is added to the Health and Safety Code, to read:

121918. For the protection and welfare of any dog under this chapter, the local public agency may adopt an ordinance to require or prohibit any of the following:

(a) Any permittee shall supply each animal with sufficient, good, and wholesome food and water as often as the feeding habits of the animal requires.

(b) Any permittee shall keep each animal and animal quarters in a clean and sanitary condition.

(c) Any permittee shall provide each animal with proper shelter and protection from the weather at all times. An animal shall not be overcrowded or exposed to temperatures detrimental to the welfare of the animal.

(d) Any permittee shall not allow any animal to be without care or control in excess of 12 consecutive hours.

(e) Any permittee shall take every reasonable precaution to ensure that no animal is teased, abused, mistreated, annoyed, tormented, or in any manner made to suffer by any person or by any means.

(f) Any permittee shall not maintain or allow any animal to exist in any manner that is, or could be, injurious to that animal.

(g) Any permittee shall not give an animal any alcoholic beverage, unless prescribed by a veterinarian.

(h) Animals that are natural enemies, temperamentally unsuited, or otherwise incompatible, shall not be quartered together or so near each other as to cause injury, fear, or torment.

(i) Any tack equipment, device, substance, or material that is, or could be, injurious or cause unnecessary cruelty to any animal shall be prohibited.

(j) The permittee shall keep or maintain animals confined at all times on the premises for which the permit has been issued, unless special permission to remove the animals has been obtained from the department. The permittee shall have full responsibility for recapturing any animal that escapes.

(k) The permittee shall give proper rest periods to any working animal. Any confined or restrained animal shall be given exercise proper for the individual animal under the particular conditions.

(*l*) The permittee shall not work, use, or rent any animal that is overheated, weakened, exhausted, sick, injured, diseased, lame, or otherwise unfit.

(m) No animal that the local public agency has suspended from use shall be worked or used until released by the local public agency.

(n) The permittee shall display no animal bearing evidence of malnutrition, ill health, unhealed injury, or having been kept in an unsanitary condition.

(o) The permittee shall keep or maintain each animal in a manner as may be prescribed to protect the public from the animal, and the animal from the public.

(p) The local public agency may order any animal to be taken to a veterinarian for examination or treatment.

(q) The permittee shall display no animal whose appearance is, or may be, offensive or contrary to public decency.

(r) The permittee shall allow no animal to constitute or cause a hazard or be a menace to the health, peace, or safety of the community.

(s) The permittee shall isolate at all times any sick or diseased animal from any healthy animal, and adequately segregate them so that the illness or disease will not be transmitted from one animal to another. In the case of pet shops, no sick, diseased, or injured animal defined by this chapter may be maintained on the premises for any purpose. Any sick or injured animal shall be isolated and given proper medical treatment.

(t) The permittee shall immediately notify the owner of any animal held on consignment or boarded if the animal refuses to eat or drink beyond a reasonable period, is injured, becomes sick, or dies. In case of death, permittee shall retain the body for 12 hours after notification has been sent to the owner.

SEC. 9. Section 121919 is added to the Health and Safety Code, to read:

121919. The local public agency may suspend or revoke a permit issued under this chapter if the local public agency determines that the permittee has done any of the following:

(a) Made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement thereof.

(b) Violated any provisions of this chapter.

(c) Violated any rule of an ordinance adopted pursuant to the authority contained in this chapter.

(d) Committed any other act that would be grounds for denial of a license.

SEC. 10. Section 121920 of the Health and Safety Code is amended to read:

121920. (a) The owner or trainer of any attack, guard, or sentry dog shall ensure that the dog has been microchipped and the owner's identification has been entered into a local or national registry. Each dog subject to this chapter shall, at all times, wear an identification tag. The identification tag shall be provided by the attack, guard, or sentry dog

company furnishing the dog for hire. The identification tag shall contain, but not be limited to, the following information:

The name of the dog.

The name, address, and telephone number of the attack, guard, or sentry dog company furnishing the dog for hire. Any telephone number so provided shall be to a telephone that is manned by a person 24 hours per day every day of the year so that calls from the public may be received and answered.

(b) The identification tag required by this section shall be in addition to any tag required or issued by any agency of government to show that a dog has been immunized or inoculated against disease.

SEC. 11. Section 121921 is added to the Health and Safety Code, to read:

121921. No person shall sell, give away, or let for hire any guard, attack, or sentry dog unless the following requirements have been met:

(a) The dog has been immunized against distemper and rabies.

(b) A certificate of rabies vaccination has been issued by a licensed veterinarian and is current and valid.

SEC. 12. Section 121940 of the Health and Safety Code is amended to read:

121940. (a) Except as otherwise specified in this chapter, any person violating any provision of this chapter, other than Section 121945, shall be subject to a civil penalty of up to one thousand dollars ($1,000) per violation. The action pursuant to this chapter may be prosecuted in the name of the people of the State of California by the district attorney for the county in which the violation occurred and in the appropriate court, or by the city attorney in the city in which the violation occurred and in the appropriate court.

(b) Nothing in this chapter limits or authorizes any act or omission that violates Section 5971 of the Penal Code.

SEC. 13. Section 121945 is added to the Health and Safety Code, to read:

121945. In lieu of the civil penalties imposed pursuant to Section 121940, any person or owner who violates this chapter shall be subject to a civil penalty of up to one thousand dollars ($1,000), or shall be prohibited from selling, renting, leasing, or training any attack, guard, or sentry dog for up to 30 days, or both. For a second offense, the person or owner shall be subject to a civil penalty of up to two thousand five hundred dollars ($2,500), or a prohibition from selling, renting, leasing, or training any attack, guard, or sentry dog for up to 90 days, or both. For a third offense, the person or owner shall be subject to a civil penalty of up to five thousand dollars ($5,000) or a prohibition from selling, renting, leasing, or training any attack, guard, or sentry dog for up to six months, or both. For a fourth or any subsequent offense, the person or

owner shall be subject to a civil penalty of up to ten thousand dollars ($10,000) or a prohibition from selling, renting, leasing, or training any attack, guard, or sentry dog for up to one year, or both. For purposes of this section, a violation that occurred over five years prior to the most recent violation shall not be considered. An action for recovery of the civil penalty and for a court order enjoining a person or owner from engaging in the business of selling, renting, leasing, or training any attack, guard, or sentry dog for the period set forth in this section, may be prosecuted by the district attorney for the county where the violation occurred, or the city attorney for the city where the violation occurred, in the appropriate court.

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.

CHAPTER 378

An act to add Section 1596.8866 to the Health and Safety Code, relating to child care.

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 1596.8866 is added to the Health and Safety Code, to read:

1596.8866. The State Department of Social Services shall reopen an investigation into a licensed child day care facility when any person provides the department with a certified copy of a court record in which a judicial officer has determined that an injury to a child may have been inflicted while in the care and custody of a day care provider. The department shall provide a copy of the court record to the child protective services agency in the county in which the incident occurred.

CHAPTER 379

An act to add Section 5006.42 to the Public Resources Code, relating to parks and recreation.

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

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

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

(a) The Cornfield property is a 32-acre abandoned railroad yard in downtown Los Angeles, adjacent to the Chinatown district and the Los Angeles River.

(b) The development of the Cornfield property as a public park presents a unique opportunity to create a major park, open space, and recreation complex in downtown Los Angeles.

(c) The site's history as a cornfield in the 19th century and as the location of the city's original aqueduct presents significant opportunities for learning. A rail transit station is planned to be located at the in the vicinity of the property, making it easily accessible to millions of low-income, transit-dependent families, senior citizens, youths, persons with disabilities, and children from across urban Los Angeles.

(d) The Cornfield site offers a once-in-a-century opportunity to create a world-class park and playground, and to develop other compatible uses in one of the city's most diverse and park-poor communities.

(e) Urban parks have historically played a pivotal role in shaping the success of cities by bringing residents and visitors new resources for environmental enrichment, educational, cultural, and recreational opportunities, and otherwise enhancing urban community life.

SEC. 2. (a) It is the intent of the Legislature to provide park and recreational opportunities for the Los Angeles region and the state by appropriating funds to the Department of Parks and Recreation to be used to purchase the 32-acre parcel known as the ''Cornfield'' rail yards in the City of Los Angeles.

(b) It is further the intent of the Legislature that local, state, and federal agencies, environmental, recreational, historic preservation, and cultural organizations, museums, educational institutions and organizations, private persons and entities, and community-based organizations, including groups instrumental in community advocacy leading to current plans for development of the Cornfield rail yards as an urban state park have the opportunity to participate in project planning and development.

SEC. 3. Section 5006.42 is added to the Public Resources Code, to read:

5006.42. (a) On or before February 1, 2002, the director shall establish the Cornfield State Park Advisory Committee, which shall be responsible for assisting the department, in an advisory capacity, to plan for interim and permanent land uses and facilities through the general planning process for the Cornfield site. The director shall terminate the advisory committee after the adoption of a general plan for the state park.

(b) The director shall convene and appoint the advisory committee. The members of the committee shall be selected by the director, who shall include, in the advisory committee, representatives from entities, including, but not limited to, local, state, and federal agencies, environmental, historic preservation, and cultural organizations, museums, educational institutions and organizations, individuals and private sector entities, and community-based organizations, including Asian-Pacific Americans, Chinese Americans, Latino community organizations, and other interested ethnic groups.

(c) The department shall take all of the following actions with respect to the development of a state park at the Cornfield site:

(1) Coordinate the implementation of the Cornfield rail yards project, considering recommendations for uses and development from the advisory committee.

(2) Survey statewide and community preferences in a range of park services appropriate for urban state park settings, as assisted by the advisory committee.

(3) Seek input and cooperate with local, state, and federal agencies, environmental, recreational, historic preservation and cultural organizations, museums, educational institutions and organizations, individuals and private sector entities, and community-based organizations, as appropriate, that are interested in the use or development of park and recreational facilities and programs for public benefit at the state park proposed to be located at the ''Cornfield'' rail yards, including the special needs of children, youths, senior citizens, and persons with disabilities.

(d) The advisory committee shall identify and recommend to the director, not later than 12 months after the date of acquisition of a fee title to the Cornfield site, priorities for long-range plans for the site that meet the needs of Californians and the general public, including park and recreational facilities and programs serving residents within communities surrounding the Cornfield rail yards in central Los Angeles.

SEC. 4. The Department of Parks and Recreation may use the sum of thirty-six million dollars ($36,000,000) for the acquisition, planning, design, environmental assessment, and environmental cleanup of the

32-acre parcel of real property known as the ''Cornfield'' rail yards in the City of Los Angeles, to be expended from the following sources:

(a) The sum of one million dollars ($1,000,000) appropriated from the General Fund pursuant to Schedule (2) of Item 0540-101-0001 of Section 2.00 of the Budget Act of 2001.

(b) The sum of thirty-five million dollars ($35,000,000) appropriated from the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Fund pursuant to Schedule (30.92) of Item 3790-301-0005 of Section 2.00 of the Budget Act of 2001.

CHAPTER 380

An act to amend Section 1367.66 of the Health and Safety Code, and to amend Section 10123.18 of the Insurance Code, relating to health care.

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 1367.66 of the Health and Safety Code is amended to read:

1367.66. Every individual or group health care service plan contract, except for a specialized health care service plan, that is issued, amended, or renewed, on or after January 1, 2002, and that includes coverage for treatment or surgery of cervical cancer shall also be deemed to provide coverage for an annual cervical cancer screening test upon the referral of the patient's physician, a nurse practitioner, or certified nurse midwife, providing care to the patient and operating within the scope of practice otherwise permitted for the licensee.

The coverage for an annual cervical cancer screening test provided pursuant to this section shall include the conventional Pap test and the option of any cervical cancer screening test approved by the federal Food and Drug Administration, upon the referral of the patient's health care provider.

Nothing in this section shall be construed to establish a new mandated benefit or to prevent application of deductible or copayment provisions in an existing plan contract. The Legislature intends in this section to provide that cervical cancer screening services are deemed to be covered if the plan contract includes coverage for cervical cancer treatment or surgery.

SEC. 2. Section 10123.18 of the Insurance Code is amended to read:

10123.18. (a) Every individual or group policy of disability insurance that provides coverage for hospital, medical, or surgical benefits, that is issued, amended, or renewed, on or after January 1, 2002, and that includes coverage for treatment or surgery of cervical cancer shall also be deemed to provide coverage upon the referral of a patient's physician, a nurse practitioner, or a certified nurse midwife, providing care to the patient and operating within the scope of practice otherwise permitted for the licensee, for an annual cervical cancer screening test.

The coverage for an annual cervical cancer screening test provided pursuant to this section shall include the conventional Pap test and the option of any cervical cancer screening test approved by the federal Food and Drug Administration, upon the referral of the patient's health care provider.

Nothing in this section shall be construed to require an individual or group policy to cover treatment or surgery for cervical cancer or to prevent application of deductible or copayment provisions contained in the policy or certificate, nor shall this section be construed to require that coverage under an individual or group policy be extended to any other procedures.

(b) This section shall not apply to vision only, dental only, accident only, specified disease, hospital indemnity, Medicare supplement, CHAMPUS supplement, long-term care, or disability income insurance. For accident only, hospital indemnity, or specified disease insurance, coverage for benefits under this section shall apply only to the extent that the benefits are covered under the general terms and conditions that apply to all other benefits under the policy or certificate. Nothing in this section shall be construed as imposing a new benefit mandate on accident only, hospital indemnity, or specified disease insurance.

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.

CHAPTER 381

An act to amend Section 96.1 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 29, 2001. Filed with
Secretary of State October 1, 2001.]

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

SECTION 1. Section 96.1 of the Revenue and Taxation Code is amended to read:

96.1. (a) Except as otherwise provided in Article 3 (commencing with Section 97), and in Article 4 (commencing with Section 98), for the 1980–81 fiscal year and each fiscal year thereafter, property tax revenues shall be apportioned to each jurisdiction pursuant to this section and Section 96.2 by the county auditor, subject to allocation and payment of funds as provided for in subdivision (b) of Section 33670 of the Health and Safety Code, to each jurisdiction in the following manner:

(1) For each tax rate area, each jurisdiction shall be allocated an amount of property tax revenue equal to the amount of property tax revenue allocated pursuant to this chapter to each jurisdiction in the prior fiscal year, modified by any adjustments required by Section 99 or 99.2.

(2) The difference between the total amount of property tax revenue and the amounts allocated pursuant to paragraph (1) shall be allocated pursuant to Section 96.5, and shall be known as the ''annual tax increment.''

(3) For purposes of this section, the amount of property tax revenue referred to in paragraph (1) shall not include amounts generated by the increased assessments under Chapter 3.5 (commencing with Section 75).

(b) Any allocation of property tax revenue that was subjected to a prior completed audit by the Controller, pursuant to the requirements of Section 12468 of the Government Code, where all findings have been resolved, shall be deemed correct.

(c) (1) Guidelines for legislation implementation issued and determined necessary by the State Association of County Auditors, and when adopted as regulations by either the Controller or the Department of Finance pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, shall be considered an authoritative source deemed correct until some future clarification by legislation or court decision.

(2) If a county auditor knowingly does not follow the guidelines referred to in paragraph (1), that county auditor shall inform the Controller of the reason or reasons for not following the guidelines. If the Controller disagrees with the stated reason or reasons for not following the guidelines, the provisions of paragraph (3) do not apply.

(3) If, by audit begun on or after July 1, 2001, or discovery by an entity on or after July 1, 2001, it is determined that an allocation method

is required to be adjusted and a reallocation is required for previous fiscal years, the cumulative reallocation or adjustment may not exceed 1 percent of the total amount levied at a 1 percent rate of the current year's original secured tax roll. The reallocation shall be completed in equal increments within the following three fiscal years, or as negotiated with the Controller in the case of reallocation to the Educational Revenue Augmentation Fund or school entities.

(4) If it is determined that an allocation method is required to be adjusted as provided in paragraph (3), the county auditor shall, in the fiscal year following the fiscal year in which this determination is made, correct the allocation method in accordance with statute.

CHAPTER 382

An act to amend Section 41601.1 of, and to add Section 48200.8 to, the Education Code, and to amend Section 4 of Chapter 942 of the Statutes of 2000, relating to pupil performance.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 41601.1 of the Education Code is amended to read:

41601.1. (a) The attendance of pupils subject to Section 48200.7 in extended year classes provided by a school district exclusively for those pupils shall be excluded from the determination of average daily attendance pursuant to Section 41601.

(b) The average daily extended year attendance of pupils subject to Section 48200.7 in classes provided by a school district exclusively for those pupils, and consistent with subdivision (a) of Section 46300, shall be determined by dividing the total number of days of extended year attendance by a divisor of 180.

(c) Units of average daily extended year attendance determined pursuant to this section, not to exceed 675 units, shall be deemed to be units of regular average daily attendance for the purposes of all calculations of funding based on average daily attendance, except that for the purposes of subdivision (d) of Section 41204, these units of average daily extended year attendance shall not be used for the purpose of calculating ''changes in enrollment'' pursuant to paragraph (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

(d) As a condition to the receipt of funding based on pupil hours of extended year attendance determined pursuant to the provisions of this section, a school district shall provide to all pupils subject to Section 48200.7, while those pupils are attending extended year classes provided exclusively for them, at least an average of:

(1) Two hundred minutes per day in kindergarten.

(2) Two hundred eighty minutes per day in grades 1 to 3, inclusive.

(3) Three hundred minutes per day in grades 4 to 8, inclusive.

(4) Three hundred sixty minutes per day in grades 9 to 12, inclusive.

(e) A school district providing extended year classes pursuant to this section shall waive the right to conduct staff development days in lieu of instructional days that exceed the number of staff development days for which attendance was claimed during the 1997–98 school year, and shall waive any right to receive average daily attendance credit for any staff development days that exceed the number of staff development days for which attendance was claimed during the 1997–98 school year, including, but not limited to, staff development days authorized pursuant to Sections 44670.6, 52022, 52854, and 56242.

(f) 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. 2. Section 48200.8 is added to the Education Code, to read:

48200.8. Subsequent to the evaluation required pursuant to subdivision (j) of Section 48200.7, the State Department of Education, in consultation with the Legislative Analyst, shall contract, as necessary, for a second independent evaluation, or as determined by the department with concurrence by the Legislative Analyst may extend the original contract authorized in subdivision (j) of Section 48200.7, to conclusively determine the effectiveness of the extended school year curriculum, instructional program, and materials in improving pupil academic outcomes provided pursuant to that section. The subsequent evaluation and data collection necessary to incorporate results of the program through the 2001–02 school year and subsequent summer period shall be funded through funds authorized pursuant to Section 41601.1, as determined by the Superintendent of Public Instruction, to ensure the Compton Unified School district shall be responsible for all costs incurred pursuant to this section. Testing and data collection conducted pursuant to this section shall be administered under the oversight of the independent evaluator, who shall be provided with copies of all test results. Results of the evaluation shall be reported on or before January 1, 2003, to the Superintendent of Public Instruction, the Legislative Analyst, the Director of Finance, and the appropriate policy and fiscal committees of the Legislature.

SEC. 3. Section 4 of Chapter 942 of the Statutes of 2000 is amended to read:

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.

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.

CHAPTER 383

An act to amend Section 6363.3 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 6363.3 of the Revenue and Taxation Code is amended to read:

6363.3. (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, used pieces of clothing, household items, or other retail items sold by thrift stores operated by a nonprofit organization if the purpose of that thrift store is to obtain revenue for the funding of medical, hospice, or social services to chronically ill individuals, and at least 75 percent of those net revenues are actually expended for the purpose of providing medical, hospice, or social services to the chronically ill.

(b) For purposes of this section, ''nonprofit organization'' means an organization that provides medical, hospice, or social services to individuals with a chronic, life-threatening illness, as defined in

subdivision (c) of Section 1568.01 of the Health and Safety Code, and is exempt from taxation under Section 23701d.

(c) This section shall cease to be operative on January 1, 2007, and as of that date is repealed.

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 384

An act to amend Sections 75030 and 75131 of, and to add Sections 75033.5 and 75090.5 to, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 75030 of the Food and Agricultural Code is amended to read:

75030. (a) ''Handler'' means the first person who sorts, grades, candles, or packages eggs, or who processes eggs into egg products, or who markets eggs or egg products in California that he or she has produced, purchased, or acquired from another person, or that he or she is marketing on behalf of another person, whether as owner, agent, employee, broker, or otherwise. When the handler is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments for which a corporate handler may be subject pursuant to this chapter shall include identical liability upon each individual director or officer of the corporation. ''Handler'' does not include a retailer, except a retailer who purchases or acquires eggs or egg products from any producer, handler, or broker that were not previously subject to assessment by the commission.

(b) For purposes of this chapter, any handler that owns, controls, or is affiliated with any other person engaged in the handling of eggs in any marketing year shall be considered to be the handler of all eggs handled by that person.

''Affiliate'' or ''affiliated with'' means a person who directly or indirectly through one or more intermediaries, controls, is controlled by, or is under the common direction and control of another person.

''Control'' means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of any person.

(c) All references to ''handler'' in this chapter, except for Article 3 (commencing with Section 75051), Article 5 (commencing with Section 75111), subdivision (a) of Section 75132, and Article 8 (commencing with Section 75171), but not including Sections 75175 and 75176, includes California handlers and out-of-state handlers, unless otherwise specified.

SEC. 2. Section 75033.5 is added to the Food and Agricultural Code, to read:

75033.5. ''Person'' means an individual, sole proprietorship, partnership, corporation, cooperative, limited liability company, firm, or other business entity.

SEC. 3. Section 75090.5 is added to the Food and Agricultural Code, to read:

75090.5. (a) The commission may petition the secretary to adopt and administer any activity authorized by the California Marketing Act of 1937, Chapter 1 (commencing with Section 58601) of Part 2 of Division 21 relating to the commodity covered by the commission. Adoption and administration of the activity by the commission shall be in accordance with the act.

(b) As determined by the secretary, the governing body of the commission may serve as the advisory board to the secretary with respect to any activity recommended and approved pursuant to this section.

SEC. 4. Section 75131 of the Food and Agricultural Code is amended to read:

75131. (a) The assessment on eggs and egg products shall be established by the commission, with the approval of not less than five handler members, prior to the beginning of each marketing season and, except as provided in subdivision (c), shall not exceed one cent ($0.01) per dozen for shell eggs, or the equivalent thereof, as determined by the commission, for egg products.

(b) The commission may establish an assessment rate that is different for eggs than for egg products, so long as it does not exceed the maximum assessment authorized in subdivision (a).

(c) An assessment greater than the maximum specified in subdivision (a) may be charged but only if it is approved by a vote of the handlers as provided for in Section 75112.

CHAPTER 385

An act to add Section 4001 to the Elections Code, relating to elections.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 4001 is added to the Elections Code, to read:

4001. (a) Notwithstanding Sections 1502 and 4000, any election in Monterey County may be conducted as an all-mailed ballot election, subject to all of the following conditions:

(1) The governing body of the city, county, or district, by resolution, authorizes the all-mailed ballot election and notifies the Secretary of State of its intent to conduct an all-mailed ballot election at least 88 days prior to the date of the election.

(2) The election does not occur on the same date as a statewide primary or general election.

(3) The election is not a special election to fill a vacancy in a state office, the State Legislature, or Congress.

(4) At least one polling place is provided in each city within the jurisdiction.

(5) The return of voted mail ballots is subject to Section 3017.

(b) If the county conducts an all-mailed ballot election, on or before December 31, 2005, the county shall report to the Legislature and to the Secretary of State regarding the success of the election, including, but not limited to, any statistics on the increase of voter fraud.

(c) This section shall remain in effect only until December 31, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before December 31, 2005, deletes or extends that date.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique geographical characteristics of Monterey County. It is the intent of the Legislature that the provisions of this act serve as a pilot program for future all-mailed ballot elections.

CHAPTER 386

An act to add Section 51220.3 to the Education Code, relating to instructional programs.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 51220.3 is added to the Education Code, to read:

51220.3. A school district shall not, when calculating a pupil's grade point average, assign extra grade weighting to a course that covers a subject required for admission to the University of California or the California State University unless the school district submits a description of the course curriculum to the Office of the President of the University of California for approval and receives confirmation from the University of California that it approves the course for extra grade weighting and includes the course on its list of honors courses. A course whose description is submitted to the University of California for approval would be reviewed through the university's existing articulation process that awards extra credit for grade weighting only for courses that provide the depth, breadth, and rigor that is substantially similar to an advanced placement course, an entry level college course, or a community college level course.

CHAPTER 387

An act to add Sections 402.5, 25004.5, 34501.5, and 68080.5 to the Government Code, relating to campaign literature.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 402.5 is added to the Government Code, to read:

402.5. (a) In addition to the acts prohibited by Section 402, a person who uses or allows to be used any reproduction or facsimile of the Great Seal of the State in any campaign literature or mass mailing, as defined in Section 82041.5, with intent to deceive the voters, is guilty of a misdemeanor.

(b) For purposes of this section, the use of a reproduction or facsimile of a seal in a manner that creates a misleading, erroneous, or false impression that the document is authorized by a public official is evidence of intent to deceive.

SEC. 2. Section 25004.5 is added to the Government Code, to read:

25004.5. (a) Any person who uses or allows to be used any reproduction or facsimile of the seal of the county in any campaign literature or mass mailing, as defined in Section 82041.5, with intent to deceive the voters, is guilty of a misdemeanor.

(b) For purposes of this section, the use of a reproduction or facsimile of a seal in a manner that creates a misleading, erroneous, or false impression that the document is authorized by a public official is evidence of intent to deceive.

SEC. 3. Section 34501.5 is added to the Government Code, to read:

34501.5. (a) Any person who uses or allows to be used any reproduction or facsimile of the seal of the city in any campaign literature or mass mailing, as defined in Section 82041.5, with intent to deceive the voters, is guilty of a misdemeanor.

(b) For purposes of this section, the use of a reproduction or facsimile of a seal in a manner that creates a misleading, erroneous, or false impression that the document is authorized by a public official is evidence of intent to deceive.

SEC. 4. Section 68080.5 is added to the Government Code, to read:

68080.5. (a) A person who uses or allows to be used any reproduction or facsimile of the seal of the California Supreme Court, an appellate court, or a superior court in any campaign literature or mass mailing, as defined in Section 82041.5, with intent to deceive the voters, is guilty of a misdemeanor.

(b) For purposes of this section, the use of a reproduction or facsimile of a seal in a manner that creates a misleading, erroneous, or false impression that the document is authorized by a public official is evidence of intent to deceive.

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.

CHAPTER 388

An act to amend the heading of Division 3 (commencing with Section 56000) of Part 1 of Title 5 of, to amend Sections 56014, 56123, 56157, 56331, 56333, 56334, 56381.6, 56428, 56661, 56663, 56700.4, 56706, 56744, 56751, 56767, 56857, 56886.5, 56895, 57026, 57078.5, 57114, 57120, and 57201 of, to amend and renumber Sections 56852.7 and 56888 of, to add Section 56886.1 to, and to repeal Section 57079.3 of, the Government Code, relating to local agency formation.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. The heading of Division 3 (commencing with Section 56000) of Part 1 of Title 5 of the Government Code is amended to read:

DIVISION 3. CORTESE-KNOX-HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT OF 2000

SEC. 2. Section 56014 of the Government Code is amended to read:

56014. ''Affected local agency'' means any local agency which contains, or would contain, or whose sphere of influence contains, any territory within any proposal or study to be reviewed by the commission.

SEC. 3. Section 56123 of the Government Code is amended to read:

56123. Except as otherwise provided in Section 56124, if a proposed change of organization or a reorganization applies to two or more affected counties, for the purpose of this division, exclusive jurisdiction shall be vested in the commission of the principal county. Any notices, proceedings, orders, or any other acts authorized or required to be given, taken, or made by the commission, board of supervisors, clerk of a county, or any other county official, shall be given, taken, or made by the persons holding those offices in the principal county. The commission of the principal county shall provide notice to the legislative body and the executive officer of all affected agencies of any proceedings, actions, or reports on the proposed change of organization or reorganization. Any officer of a county other than the principal county shall cooperate with the commission of the principal county and shall furnish the commission of the principal county with any certificates, records, or certified copies of records as may be necessary to enable the commission of the principal county to comply with this division.

SEC. 4. Section 56157 of the Government Code is amended to read:

56157. When mailed notice is required to be given to:

(a) A county, city, or district, it shall be addressed to the clerk of the county, city, or district.

(b) A commission, it shall be addressed to the executive officer.

(c) Proponents, it shall be addressed to the persons so designated in the petition at the address specified in the petition.

(d) Landowners, it shall be addressed to each person to whom land is assessed, as shown upon the most recent assessment roll being prepared by the county at the time the commission adopts a resolution of application, at the address shown upon the assessment roll.

(e) Persons requesting special notice, it shall be addressed to each person who has filed a written request for special notice with the executive officer or clerk at the mailing address specified in the request.

(f) To all registered voters and owners of property, to the address as shown on the most recent assessment roll being prepared by the county at the time a certificate of sufficiency is issued or a resolution of application is adopted to initiate proceedings within the affected territory and within 300 feet of the exterior boundary of the property that is the subject of the hearing at least 21 days prior to the hearing. This requirement may be waived if proof satisfactory to the commission is presented that shows that individual notices to registered voters and landowners have already been provided by the initiating agency. Notice shall also either be posted or published in one newspaper 21 days prior to the hearing. If this section would require more than 1,000 notices to be mailed, then notice may instead be provided pursuant to paragraph (3) of subdivision (a) of Section 65091.

SEC. 5. Section 56331 of the Government Code is amended to read:

56331. When appointing a public member pursuant to Sections 56325, 56326, and 56329, the commission may also appoint one alternate public member who may serve and vote in place of a regular public member who is absent or who disqualifies himself or herself from participating in a meeting of the commission.

If the office of a regular public member becomes vacant, the alternate member may serve and vote in place of the former regular public member until the appointment and qualification of a regular public member to fill the vacancy.

No person appointed as a public member or alternate public member pursuant to this chapter shall be an officer or employee of the county or any city or district with territory in the county, provided, however, that any officer or employee serving on January 1, 1994, may complete the term for which he or she was appointed.

SEC. 6. Section 56333 of the Government Code is amended to read:

56333. When a commission is enlarged to seven members as provided in Section 56332, the public members appointed pursuant to Sections 56325 and 56329 shall thereafter be appointed by members of

the commission representing cities, counties, and special districts. Those appointments shall be made at the times and in the manner provided in Section 56334.

SEC. 7. Section 56334 of the Government Code is amended to read:

56334. The term of office of each member shall be four years and until the appointment and qualification of his or her successor. Upon enlargement of the commission by two members, as provided in Section 56332, the new members first appointed to represent independent special districts shall classify themselves by lot so that the expiration date of the term of office of one new member coincides with the existing member who holds the office represented by the original two-year term on the commission and of the other new member coincides with the existing member who holds the office represented by the original four-year term on the commission. The body which originally appointed a member whose term has expired shall appoint his or her successor for a full term of four years. Any member may be removed at any time and without cause by the body appointing that member. The expiration date of the term of office of each member shall be the first Monday in May in the year in which the term of the member expires, unless procedures adopted by the commission specify an alternate date to apply uniformly to all members. However, the length of a term of office shall not be extended more than once. Any vacancy in the membership of the commission shall be filled for the unexpired term by appointment by the body which originally appointed the member whose office has become vacant.

The chairperson of the commission shall be selected by the members of the commission.

Commission members and alternates shall be reimbursed for the actual amount of their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their office. The commission may authorize payment of a per diem to commission members and alternates for each day while they are in attendance at meetings of the commission.

SEC. 8. Section 56381.6 of the Government Code is amended to read:

56381.6. (a) Notwithstanding the provisions of Section 56381, for counties whose membership on the commission is established pursuant to Sections 56326, 56326.5, 56327, or 56328, the commission's annual operational costs shall be apportioned among the classes of public agencies that select members on the commission in proportion to the number of members selected by each class. The classes of public agencies that may be represented on the commission are the county, the cities, and independent special districts. Any alternative cost apportionment procedure may be adopted by the commission, subject to

a majority affirmative vote of the commission that includes the affirmative vote of at least one of the members selected by the county, one of the members selected by the cities, and one of the members selected by districts, if special districts are represented on the commission.

(b) Allocation of costs among individual cities and independent special districts and remittance of payments shall be in accordance with the procedures of Section 56381. Notwithstanding Section 56381, any city that has permanent membership on the commission pursuant to Sections 56326, 56326.5, 56327, or 56328 shall be apportioned the same percentage of the commission's annual operational costs as its permanent member bears to the total membership of the commission, excluding any public members selected by all the members. The balance of the cities' portion of the commission's annual operational costs shall be apportioned to the remaining cities in the county in accordance with the procedures of Section 56381.

SEC. 10. Section 56428 of the Government Code is amended to read:

56428. (a) Any person or local agency may file a written request with the executive officer requesting amendments to a sphere of influence or urban service area adopted by the commission. The request shall state the nature of the proposed amendment, state the reasons for the request, include a map of the proposed amendment, and contain any additional data and information as may be required by the executive officer.

(b) After complying with the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, the executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given. The executive officer shall give notice in the manner provided by Section 56427. On the date and time provided in the notice, the commission may do either of the following:

(1) Without further notice, consider the amendments to a sphere of influence.

(2) Set a future date for the hearing on the request.

(c) The executive officer shall review each requested amendment and prepare a report and recommendation. The report shall be completed not less than five days before the date specified in the notice of hearing. The executive officer shall send copies of the report to the person or agency making the request, each affected local agency, and each person who has filed a request for a report.

(d) At its meeting, the commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 70 days from the date

specified in the original notice. The person or agency which filed the request may withdraw it at any time prior to the conclusion of the consideration by the commission.

(e) At the conclusion of its consideration, the commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. The commission shall follow the procedures in Section 56425.

(f) The commission may require the person or agency making a request pursuant to this section to pay a fee to cover the commission's costs. The fee shall not exceed the estimated reasonable cost of providing the service and shall be set pursuant to Section 56383. The commission may waive the fee if it finds that the request can be considered and studied as part of the periodic review of spheres of influence required by Section 56425. In addition, the commission may waive the fee if it finds that payment would be detrimental to the public interest.

(g) The commission and executive officer may review and act on any request to amend a sphere of influence or urban service area concurrently with their review and determination on any related change of organization or reorganization. In case of a conflict between the provisions of this section and any other provisions of this part, the other provisions shall prevail.

SEC. 11. Section 56661 of the Government Code is amended to read:

56661. To the extent that the commission maintains an Internet Web site, notice of all public hearings shall be made available in electronic format on that site. The executive officer shall also give mailed notice of any hearing by the commission, as provided in Sections 56155 to 56157, inclusive, by mailing notice of the hearing or transmitting by electronic mail, if available to the recipient, to all of the following persons and entities:

(a) To each affected local agency by giving notice to the legislative body and the executive officer of the agency.

(b) To the proponents, if any.

(c) To each person who has filed a written request for special notice with the executive officer.

(d) If the proposal is for any annexation or detachment, or for a reorganization providing for the formation of a new district, to each city within three miles of the exterior boundaries of the territory proposed to be annexed, detached, or formed into a new district.

(e) If the proposal is to incorporate a new city or for the formation of a district, to the affected county.

(f) If the proposal includes the formation of, or annexation of territory to, a fire protection district formed pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of

Division 12 of the Health and Safety Code, and all or part of the affected territory has been classified as a state responsibility area, to the Director of Forestry and Fire Protection.

(g) If the proposal would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), to the Director of Conservation.

(h) To all registered voters and owners of property, as shown on the most recent assessment roll being prepared by the county at the time the commission adopts a resolution of application, within the subject territory and within 300 feet of the exterior boundary of the property that is the subject of the hearing at least 21 days prior to the hearing. In lieu of the assessment roll, the agency may use the records of the county assessor or tax collector or any other more current record. Notice shall also either be posted or published in one newspaper 21 days prior to the hearing. If this section would require more than 1,000 notices to be mailed, then notice may instead be provided pursuant to paragraph (3) of subdivision (a) of Section 65091.

SEC. 12. Section 56663 of the Government Code is amended to read:

56663. (a) If a petition for an annexation, a detachment, or a reorganization consisting solely of annexations or detachments, or both, or the formation of a county service area is signed by all of the owners of land within the affected territory of the proposed change of organization or reorganization, or if a resolution of application by a legislative body of an affected district, affected county, or affected city making a proposal for an annexation or detachment, or for a reorganization consisting solely of annexations or detachments, or both, or the formation of a county service area is accompanied by proof, satisfactory to the commission, that all the owners of land within the affected territory have given their written consent to that change of organization or reorganization, the commission may approve or disapprove the change of organization or reorganization, without notice and hearing by the commission. In those cases, the commission may also approve and conduct proceedings for the change of organization or reorganization under any of the following conditions:

(1) Without notice and hearing.

(2) Without an election.

(3) Without notice, hearing, or an election.

(b) The executive officer shall give any affected agency mailed notice of the filing of the petition or resolution of application initiating proceedings by the commission. The commission shall not, without the written consent of the subject agency, take any further action on the petition or resolution of application for 10 days following that mailing.

Upon written demand by an affected local agency, filed with the executive officer during that 10-day period, the commission shall make determinations upon the petition or resolution of application only after notice and hearing on the petition or resolution of application. If no written demand is filed, the commission may make those determinations without notice and hearing. By written consent, which may be filed with the executive officer at any time, a subject agency may do any of the following:

(1) Waive the requirement of mailed notice.

(2) Consent to the commission making determinations without notice and hearing.

(3) Waive the requirement of mailed notice and consent to the commission making determinations without notice and hearing.

(c) In the case of uninhabited territory, the commission may waive protest proceedings pursuant to Part 4 (commencing with Section 57000) entirely if both of the following conditions apply:

(1) All the owners of land within the affected territory have given their written consent to the change of organization or reorganization.

(2) All affected local agencies that will gain or lose territory as a result of the change of organization or reorganization have consented in writing to a waiver of protest proceedings.

(d) In the case of inhabited city and district annexations or detachments, or both, the commission may waive protest proceedings pursuant to Part 4 (commencing with Section 57000) entirely if both of the following conditions apply:

(1) The commission has provided written notice of commission proceedings to all registered voters and landowners within the affected territory and no written opposition from registered voters or landowners within the affected territory is received prior to the conclusion of the commission meeting. The written notice shall disclose to the registered voters and landowners that unless written opposition is received regarding the proposal or the commission's intention to waive protest proceedings, that there will be no subsequent protest and election proceedings.

(2) All affected local agencies that will gain or lose territory as a result of the change of organization or reorganization have consented in writing to a waiver of protest proceedings.

SEC. 13. Section 56700.4 of the Government Code is amended to read:

56700.4. (a) Before circulating any petition for change of organization, the proponent shall file with the executive officer a notice of intention that shall include the name and mailing address of the proponent and a written statement, not to exceed 500 words in length, setting forth the reasons for the proposal. The notice shall be signed by

a representative of the proponent, and shall be in substantially the following form:

Notice of Intent to Circulate Petition

Notice is hereby given of the intention to circulate a petition proposing to ____.

The reasons for the proposal are:

(b) After the filing required pursuant to subdivision (a), the petition may be circulated for signatures.

(c) Upon receiving the notice, the executive officer shall notify affected local agencies.

(d) The notice requirements of this section shall apply in addition to any other applicable notice requirements.

SEC. 14. Section 56706 of the Government Code is amended to read:

56706. (a) Within 30 days after the date of receiving a petition, the executive officer shall cause the petition to be examined by, in the case of a registered voter petition, the county elections official, in accordance with Sections 9113 to 9115, inclusive, of the Elections Code, or in the case of a landowner petition, the county assessor, and shall prepare a certificate of sufficiency indicating whether the petition is signed by the requisite number of signers.

(b) (1) Except as provided in paragraph (2), if the certificate of the executive officer shows the petition to be insufficient, the executive officer shall immediately give notice by certified mail of the insufficiency to the proponents, if any. That mailed notice shall state in what amount the petition is insufficient. Within 15 days after the date of the notice of insufficiency, a supplemental petition bearing additional signatures may be filed with the executive officer.

(2) Notwithstanding paragraph (1), the proponents of the petition may, at their option, collect signatures for an additional 15 days immediately following the statutory period allowed for collecting signatures without waiting for notice of insufficiency. Any proponent choosing to exercise this option may not file a supplemental petition as provided in paragraph (1).

(c) Within 10 days after the date of filing a supplemental petition, the executive officer shall examine the supplemental petition and certify in writing the results of his or her examination.

(d) A certificate of sufficiency shall be signed by the executive officer and dated. That certificate shall also state the minimum signature requirements for a sufficient petition and show the results of the

executive officer's examination. The executive officer shall mail a copy of the certificate of sufficiency to the proponents, if any.

SEC. 15. Section 56852.7 of the Government Code is amended and renumbered to read:

56732. If the commission approves a proposal for a special reorganization that includes the incorporation of a city with a population of more than 1,000,000, the commission shall do both of the following:

(a) Specify in the resolution making determinations that, notwithstanding Section 36501, the legislative body of the city shall consist of an even number of members, with at least 12 elected by districts, as defined in Section 34871. The commission shall establish the initial boundaries of a sufficient number of districts of approximately equal populations, consistent with state and federal law, not to exceed more than 100,000 residents per district.

(b) Specify in the resolution that the mayor, who shall be a voting member of the council, shall be elected on a citywide basis.

SEC. 16. Section 56888 of the Government Code is amended and renumbered to read:

56734. (a) This section shall only apply to a special reorganization.

(b) All public employees to which Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 applies shall continue to be deemed public employees of the original local agency or of the newly incorporated local agency for all the purposes of that chapter, including, but not limited to, the continuation and application of any collective bargaining agreement that applies to these employees, and all representational and collective bargaining rights under that chapter.

(c) Any existing collective bargaining agreement shall remain in effect and be fully binding on the original local agency or on the newly incorporated local agency, and on the employee organizations that are parties to the agreement for the balance of the term of the agreement, and until a subsequent agreement has been established.

(d) Any existing retiree benefits, including, but not limited to, health, dental, and vision care benefits, shall not be diminished.

(e) Notwithstanding any other provision of law, an employee organization that has been recognized as the exclusive representative of local agency public employees affected by a special reorganization shall retain exclusive representation of the unit employees of the original local agency, or of the newly incorporated local agency.

SEC. 17. Section 56744 of the Government Code is amended to read:

56744. Unless otherwise determined by the commission pursuant to subdivision (m) of Section 56375, territory shall not be incorporated into, or annexed to, a city pursuant to this division if, as a result of that incorporation or annexation, unincorporated territory is completely

surrounded by that city or by territory of that city on one or more sides and the Pacific Ocean on the remaining sides.

SEC. 18. Section 56751 of the Government Code is amended to read:

56751. (a) Upon receipt by the commission of a proposed change of organization or reorganization, except a special reorganization, that includes the detachment of territory from any city, the executive officer shall place the proposal on the agenda for the next commission meeting for information purposes only and shall transmit a copy of the proposal to any city from which the detachment of territory is requested.

(b) No later than 60 days after the date that the proposal is on the commission's meeting agenda in accordance with subdivision (a), an affected city may adopt and transmit to the commission a resolution requesting termination of the proceedings.

(c) If an affected city has adopted and transmitted to the commission a resolution requesting termination of proceedings within the time period prescribed by this section, then the commission shall terminate the proceedings upon receipt of the resolution from the city.

SEC. 19. Section 56767 of the Government Code is amended to read:

56767. A petition for annexation of territory to a city shall be signed by either of the following:

(a) Not less than 5 percent of the number of registered voters residing within the territory proposed to be annexed as shown on the county register of voters.

(b) Not less than 5 percent of the number of owners of land within the territory proposed to be annexed who also own 5 percent of the assessed value of land within the territory as shown on the last equalized assessment roll.

SEC. 20. Section 56857 of the Government Code is amended to read:

56857. (a) Upon receipt by the commission of a proposed change of organization or reorganization that includes the annexation or territory to any district, if the proposal is not filed by the district to which annexation of territory is proposed, the commission shall place the proposal on the agenda for the next commission meeting for information purposes only and shall transmit a copy of the proposal to any district to which an annexation of territory is requested.

(b) No later than 60 days after the date that the proposal is on the commission's meeting agenda in accordance with subdivision (a), any district to which annexation of territory is proposed may adopt and transmit to the commission a resolution requesting termination of the proceedings.

(c) If any district to which annexation of territory is proposed has adopted and transmitted to the commission a resolution requesting termination of proceedings within the time period prescribed by this section, then the commission shall terminate the proceedings upon receipt of the resolution from the district.

SEC. 21. Section 56886.1 is added to the Government Code, to read:

56886.1. When applicable, the terms and conditions of any change of organization or reorganization shall provide public utilities, as defined in Section 216 of the Public Utilities Code, 90 days following the recording of the certificate of completion to make the necessary changes to impacted utility customer accounts.

SEC. 22. Section 56886.5 of the Government Code is amended to read:

56886.5. If a proposal includes the formation of a district or the incorporation of a city, the commission shall determine whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner. If a new single-purpose local agency is deemed necessary, the commission shall consider reorganization with other single-purpose local agencies that provide related services.

SEC. 23. Section 56895 of the Government Code is amended to read:

56895. (a) When a commission has adopted a resolution making determinations, any person or affected agency may file a written request with the executive officer requesting amendments to or reconsideration of the resolution. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously, or applicable new law, are claimed to warrant the reconsideration. If the request is filed by a school district that received notification pursuant to Section 56658, the commission shall consider that request at a public hearing.

(b) Notwithstanding Section 56106, the deadlines set by this section are mandatory. The person or agency shall file the written request within 30 days of the adoption of the initial or superseding resolution by the commission making determinations. If no person or agency files a timely request, the commission shall not take any action pursuant to this section.

(c) Upon receipt of a timely request, the executive officer shall not take any further action until the commission acts on the request.

(d) Upon receipt of a timely request by the executive officer, the time to file any action, including, but not limited to, an action pursuant to Section 21167 of the Public Resources Code and any provisions of Part 4 (commencing with Section 57000) governing the time within which the commission is to act shall be tolled for the time that the commission takes to act on the request.

(e) The executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given pursuant to this subdivision. The executive officer shall give notice of the consideration of the request by the commission in the same manner as for the original proposal. The executive officer may give notice in any other manner as he or she deems necessary or desirable.

(f) At that meeting, the commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 70 days from the date specified in the notice. The person or agency that filed the request may withdraw it at any time prior to the conclusion of the consideration by the commission.

(g) At the conclusion of its consideration, the commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. If the commission disapproves the request, it shall not adopt a new resolution making determinations. If the commission approves the request, with or without amendment, wholly, partially, or conditionally, the commission shall adopt a resolution making determinations which shall supersede the resolution previously issued.

(h) The determinations of the commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by the commission.

(i) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected pursuant to Section 56883.

SEC. 23.5. Section 56895 of the Government Code is amended to read:

56895. (a) When a commission has adopted a resolution making determinations, any person or affected agency may file a written request with the executive officer requesting amendments to or reconsideration of the resolution. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously, or applicable new law, are claimed to warrant the reconsideration. If the request is filed by a school district that received notification pursuant to Section 56658, the commission shall consider that request at a public hearing.

(b) Notwithstanding Section 56106, the deadlines set by this section are mandatory. The person or agency shall file the written request within 30 days of the adoption of the initial or superseding resolution by the commission making determinations. If no person or agency files a timely request, the commission shall not take any action pursuant to this section.

(c) Upon receipt of a timely request, the executive officer shall not take any further action until the commission acts on the request.

(d) Upon receipt of a timely request by the executive officer, the time to file any action, including, but not limited to, an action pursuant to Section 21167 of the Public Resources Code and any provisions of Part 4 (commencing with Section 57000) governing the time within which the commission is to act shall be tolled for the time that the commission takes to act on the request.

(e) The executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given pursuant to this subdivision. The executive officer shall give notice of the consideration of the request by the commission in the same manner as for the original proposal. The executive officer may give notice in any other manner as he or she deems necessary or desirable.

(f) At that meeting, the commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 35 days from the date specified in the notice. The person or agency that filed the request may withdraw it at any time prior to the conclusion of the consideration by the commission.

(g) At the conclusion of its consideration, the commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. If the commission disapproves the request, it shall not adopt a new resolution making determinations. If the commission approves the request, with or without amendment, wholly, partially, or conditionally, the commission shall adopt a resolution making determinations that shall supersede the resolution previously issued.

(h) The determinations of the commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by the commission.

(i) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected pursuant to Section 56883.

SEC. 24. Section 57026 of the Government Code is amended to read:

57026. The notice required to be given by Section 57025 shall contain all of the following information:

(a) A statement of the distinctive short form designation assigned by the commission to the proposal.

(b) A statement of the manner in which, and by whom, proceedings were initiated. However, a reference to the proponents, if any, shall be sufficient where proceedings were initiated by a petition.

(c) A description of the exterior boundaries of the subject territory.

(d) A description of the particular change or changes of organization proposed for each of the subject districts or cities and new districts or new cities proposed to be formed, and any terms and conditions to be applicable. The description may include a reference to the commission's resolution making determinations for a full and complete description of the change of organization or reorganization, and the terms and conditions.

(e) A statement of the reason or reasons for the change of organization or reorganization as set forth in the proposal submitted to the commission.

(f) (1) Except as otherwise provided in paragraph (2), a statement of the time, date, and place of the protest hearing on the proposed change of organization or reorganization.

(2) Notwithstanding paragraph (1), if inhabited territory is proposed to be annexed to a city with more than 100,000 residents which is located in a county with a population of over 4,000,000 the date shall be at least 90 days, but not more than 105 days, after the date of adoption of the resolution initiating the proceedings. The resolution shall specify a date 90 days prior to the hearing when registered voters may begin to file protests.

(g) If the subject territory is inhabited and the change of organization or reorganization provides for the submission of written protests, a statement that any owner of land within the territory, or any registered voter residing within the territory, may file a written protest against the proposal with the executive officer of the commission at any time prior to the conclusion of the hearing by the commission on the proposal.

(h) If the subject territory is uninhabited and the change of organization or reorganization provides for submission of written protests, a statement that any owner of land within the territory may file a written protest against the proposal with the executive officer of the commission at any time prior to the conclusion of the hearing by the commission on the proposal.

SEC. 25. Section 57078.5 of the Government Code is amended to read:

57078.5. If the affected territory with respect to a proposed annexation consists of (a) territories that are not contiguous to one another and (b) two or more distinct communities, as defined in the county general plan, the census unincorporated places listing, or other commonly recognized community designation, as determined by the commission, and any one community has more than 250 registered voters, any protest filed pursuant to Section 57078 shall be accounted separately for that community, unless the annexation is proposed pursuant to Section 56375.3.

SEC. 26. Section 57079.3 of the Government Code is repealed.

SEC. 27. Section 57114 of the Government Code is amended to read:

57114. (a) Notwithstanding Sections 56854 and 57111, for any proposal for the dissolution of one or more districts and the annexation of all or substantially all of their territory to another district, the commission shall forward the change of organization or reorganization for confirmation by the voters if the commission finds either of the following:

(1) In the case of inhabited territory, that a petition requesting that the proposal be submitted to confirmation by the voters has been signed by either of the following:

(A) At least 25 percent of the number of landowners within any affected district within the affected territory who own at least 25 percent of the assessed value of land within the territory.

(B) At least 25 percent of the voters entitled to vote as a result of residing within, or owning land within, any affected district within the affected territory.

(2) In the case of a landowner-voter district, that the territory is uninhabited and a petition requesting that the proposal be submitted to confirmation by the voters has been signed by at least 25 percent of the number of landowners within any affected district within the affected territory, owning at least 25 percent of the assessed value of land within the territory of that district.

(b) If a petition that meets the requirements of this section has been filed, the commission shall approve the proposal subject to confirmation by the voters of each district that has filed such a petition. The voter confirmation requirements set forth in subdivision (a) shall not apply to any proposal initiated by the commission under Section 56375 or where each affected district has consented to the proposal by a resolution adopted by a majority vote of its board of directors.

SEC. 27.5. Section 57114 of the Government Code is amended to read:

57114. (a) Notwithstanding Sections 56854 and 57111, for any proposal for the dissolution of one or more districts and the annexation of all or substantially all of their territory to another district, not initiated by the commission pursuant to subdivision (a) of Section 56375, the commission shall forward the change of organization or reorganization for confirmation by the voters if the commission finds either of the following:

(1) In the case of inhabited territory, that a petition requesting that the proposal be submitted to confirmation by the voters has been signed by either of the following:

(A) At least 25 percent of the number of landowners within any affected district within the affected territory who own at least 25 percent of the assessed value of land within the territory.

(B) At least 25 percent of the voters entitled to vote as a result of residing within, or owning land within, any affected district within the affected territory.

(2) In the case of a landowner-voter district, that the territory is uninhabited and a petition requesting that the proposal be submitted to confirmation by the voters has been signed by at least 25 percent of the number of landowners within any affected district within the affected territory, owning at least 25 percent of the assessed value of land within the territory of that district.

(b) If a petition that meets the requirements of this section has been filed, the commission shall approve the proposal subject to confirmation by the voters of each district that has filed such a petition. The voter confirmation requirements set forth in subdivision (a) shall not apply to any proposal initiated by the commission under Section 56375 or where each affected district has consented to the proposal by a resolution adopted by a majority vote of its board of directors.

SEC. 28. Section 57120 of the Government Code is amended to read:

57120. In addition to any other requirements, any resolution of the commission ordering a formation or an incorporation subject to an election shall provide for the establishment of the appropriations limit determined pursuant to Section 56811 or 56812.

SEC. 29. Section 57201 of the Government Code is amended to read:

57201. The certificate of completion prepared and executed by the executive officer shall contain all of the following information:

(a) The name of each newly incorporated city, each new district, and the name of each existing local agency for which a change of organization or reorganization was ordered and the name of the county within which any new or existing local agencies are located.

(b) A statement of each type of change of organization or reorganization ordered.

(c) A description of the boundaries of the new city ordered incorporated, the new district ordered formed or of any territory affected by the change of organization or reorganization, which description may be made by reference to a map and legal description showing the boundaries attached to the certificate.

(d) Any terms and conditions of the change of organization or reorganization.

SEC. 30. (a) Section 23.5 of this bill incorporates amendments to Section 56895 of the Government Code proposed by both this bill and

AB 1495. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 56895 of the Government Code, and (3) this bill is enacted after AB 1495, in which case Section 23 of this bill shall not become operative.

(b) Section 27.5 of this bill incorporates amendments to Section 57114 of the Government Code proposed by both this bill and AB 948. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 57114 of the Government Code, and (3) this bill is enacted after AB 948, in which case Section 27 of this bill shall not become operative.

CHAPTER 389

An act to amend Sections 10177, 10229, 10240, 10471, 10471.1, 10471.5, 10471.6, 10472, and 10472.1 of the Business and Professions Code, relating to real estate.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 10177 of the Business and Professions Code is amended to read:

10177. The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that

licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(c) Knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of any material false statement or representation concerning his or her business, or any business opportunity or any land or subdivision (as defined in Chapter 1 (commencing with Section 11000) of Part 2) offered for sale.

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(e) Willfully used the term ''realtor'' or any trade name or insignia of membership in any real estate organization of which the licensee is not a member.

(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(g) Demonstrated negligence or incompetence in performing any act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

(i) Has used his or her employment by a governmental agency in a capacity giving access to records, other than public records, in a manner that violates the confidential nature of the records.

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(k) Violated any of the terms, conditions, restrictions, and limitations contained in any order granting a restricted license.

(*l*) Solicited or induced the sale, lease, or listing for sale or lease of residential property on the ground, wholly or in part, of loss of value, increase in crime, or decline of the quality of the schools due to the present or prospective entry into the neighborhood of a person or persons of another race, color, religion, ancestry, or national origin.

(m) Violated the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or regulations of the Commissioner of Corporations pertaining thereto.

(n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or the regulations of the Commissioner of Corporations pertaining thereto.

(o) Failed to disclose to the buyer of real property, in a transaction in which the licensee is an agent for the buyer, the nature and extent of a licensee's direct or indirect ownership interest in that real property. The direct or indirect ownership interest in the property by a person related to the licensee by blood or marriage, by an entity in which the licensee has an ownership interest, or by any other person with whom the licensee has a special relationship shall be disclosed to the buyer.

(p) Violated Section 10229.

If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation's stock, the commissioner may not deny the issuance of a real estate license to, or suspend or revoke the real estate license of, the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation.

SEC. 2. Section 10229 of the Business and Professions Code is amended to read:

10229. Any transaction that involves the sale of or offer to sell a series of notes secured directly by an interest in the same real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, shall comply with all of the following:

(a) (1) A notice in the following form and containing the following information shall be filed with the commissioner within 30 days after the first transaction and within 30 days of any material change in the information required in the notice:

TO: Real Estate Commissioner
Mortgage Loan Section
2201 Broadway
Sacramento, CA 95818

This notice is filed pursuant to Section 10229 of the Business and Professions Code.

( ) Original Notice ( ) Amended Notice

1. Name of Broker conducting transaction under Section 10229:

_____

2. Broker license identification number: _____

3. List the month the fiscal year ends: _____

4. Broker's telephone number: _____

5. Firm name (if different from "1"):

_____

6. Street address (main location):

_____
and Street City State ZIP Code

7. Mailing address (if different from "6"):

_____

8. Servicing Agent: Identify by name, address, and telephone number the person or entity who will act as the servicing agent in transactions pursuant to Section 10229 (including the undersigned Broker if that is the case):

_____
_____

9. Total number of multilender notes arranged: _____

10. Total number of interests sold to investors on the multilender's notes: _____

11. Inspection of trust account (before answering this question, review the provisions of paragraph (3) of subdivision (j) of Section 10229).

CHECK ONLY ONE OF THE FOLLOWING:

( ) The undersigned Broker is (or expects to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (j) of Section 10229.

Amount of Multilender Payments Collected Last Fiscal Quarter: _____

Total Number of Investors Due Payments Last Fiscal Quarter: _____

( ) The undersigned Broker is NOT (or does NOT expect to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (j) of Section 10229.

12. Signature. The contents of this notice are true and correct.

_____ _____

Date Type Name of Broker

_____

Signature of Broker or of Designated Officer of Corporate Broker

_____

Type Name of Person(s) Signing This Notice

NOTE: AN AMENDED NOTICE MUST BE FILED BY THE BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE IN THE INFORMATION REQUIRED TO BE SET FORTH HEREIN.

(2) A broker or person who becomes the servicing agent for notes or interest sold pursuant to this section, upon which payments due during any period of three consecutive months in the aggregate exceed one hundred twenty-five thousand dollars ($125,000) or the number of persons entitled to the payments exceeds 120, shall file the notice required by paragraph (1) with the commissioner within 30 days after becoming the servicing agent.

(b) All advertising employed for transactions under this section shall (1) show the name of the broker and (2) comply with Section 10235 of the Business and Professions Code and Sections 260.302 and 2848 of Title 10 of the California Code of Regulations. Brokers and their agents are cautioned that a reference to a prospective investor that a transaction is conducted under this section may be deemed misleading or deceptive if this representation may reasonably be construed by the investor as an implication of merit or approval of the transaction.

(c) The real property directly securing the notes or interests is located in this state, the note or notes are not by their terms subject to subordination to any subsequently created deed of trust upon the real property, and the note or notes are not promotional notes secured by liens on separate parcels of real property in one subdivision or in contiguous subdivisions. For purposes of this subdivision, a promotional note means a promissory note secured by a trust deed, executed on unimproved real property or executed after construction of an improvement of the property but before the first purchase of the property as so improved, or executed as a means of financing the first purchase of the property as so improved, that is subordinate, or by its terms may become subordinate, to any other trust deed on the property. However, the term ''promotional note'' does not include either of the following:

(1) A note that was executed in excess of three years prior to being offered for sale.

(2) A note secured by a first trust deed on real property in a subdivision that evidences a bona fide loan made in connection with the financing of the usual cost of the development in a residential, commercial, or industrial building or buildings on the property under a written agreement providing for the disbursement of the loan funds as costs are incurred or in relation to the progress of the work and providing for title insurance ensuring the priority of the security as against mechanic's and materialmen's liens or for the final disbursement of at least 10 percent of the loan funds after the expiration of the period for the filing of mechanic's and materialmen's liens.

(d) The notes or interests are sold by or through a real estate broker, as principal or agent. At the time the interests are originally sold or assigned, neither the broker nor an affiliate of the broker shall have an interest as owner, lessor, or developer of the property securing the loan,

or any contractual right to acquire, lease, or develop the property securing the loan. This provision does not prohibit a broker from conducting the following transactions if, in either case, the disclosure statement furnished by the broker pursuant to subdivision (k) discloses the interest of the broker or affiliate in the transaction and the circumstances under which the broker or affiliate acquired the interest:

(1) A transaction in which the broker or an affiliate of the broker is acquiring the property pursuant to a foreclosure under, or sale pursuant to, a deed of trust securing a note for which the broker is the servicing agent or that the broker sold to the holder or holders.

(2) A transaction in which the broker or an affiliate of the broker is reselling from inventory property acquired by the broker pursuant to a foreclosure under, or sale pursuant to, a deed of trust securing a note for which the broker is the servicing agent or that the broker sold to the holder or holders.

(e) (1) The notes or interests shall not be sold to more than 10 persons, each of whom meets one or both of the qualifications of income or net worth set forth below and signs a statement, which shall be retained by the broker for four years, conforming to the following:

Transaction Identifier: _____

Name of Purchaser: _____ Date: _____

Check either one of the following, if true:

( ) My investment in the transaction does not exceed 10% of my net worth, exclusive of home, furnishings, and automobiles.

( ) My investment in the transaction does not exceed 10% of my adjusted gross income for federal income tax purposes for my last tax year or, in the alternative, as estimated for the current year.

_____

Signature

(2) The number of offerees shall not be considered for the purposes of this section.

(3) A husband and wife and their dependents, and an individual and his or her dependents, shall be counted as one person.

(4) A retirement plan, trust, business trust, corporation, or other entity that is wholly owned by an individual and the individual's spouse or the individual's dependents, or any combination thereof, shall not be counted separately from the individual, but the investments of these entities shall be aggregated with those of the individual for the purposes

of the statement required by paragraph (1). If the investments of any entities are required to be aggregated under this subdivision, the adjusted gross income or net worth of these entities may also be aggregated with the net worth, income, or both, of the individual.

(5) The ''institutional investors'' enumerated in subdivision (i) of Section 25102 or subdivision (c) of Section 25104 of the Corporations Code, or in a rule adopted pursuant thereto, shall not be counted.

(f) The notes or interests of the purchasers shall be identical in their underlying terms, including the right to direct or require foreclosure, rights to and rate of interest, and other incidents of being a lender, and the sale to each purchaser pursuant to this section shall be upon the same terms, subject to adjustment for the face or principal amount or percentage interest purchased and for interest earned or accrued. This subdivision does not preclude different selling prices for interests to the extent that these differences are reasonably related to changes in the market value of the loan occurring between the sales of these interests. The interest of each purchaser shall be recorded.

(g) (1) Except as provided in paragraph (2), the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, shall not exceed the following percentages of the current market value of the real property, as determined in writing by the broker or appraiser pursuant to Section 10232.6, plus the amount for which the payment of principal and interest in excess of the percentage of current market value is insured for the benefit of the holders of the notes or interests by an insurer admitted to do business in this state by the Insurance Commissioner:

(A)	Single-family residence, owner occupied	80%
(B)	Single-family residence, not owner occupied	75%
(C)	Commercial and income-producing properties	65%
(D)	Single-family residentially zoned lot or parcel which has installed offsite improvements including drainage, curbs, gutters, sidewalks, paved roads, and utilities as mandated by the political subdivision having jurisdiction over the lot or parcel	65%
(E)	Land that has been zoned for (and if required, approved for subdivision as) commercial or residential development . . .	50%
(F)	Other real property	35%

(2) The percentage amounts specified in paragraph (1) may be exceeded when and to the extent that the broker determines that the encumbrance of the property in excess of these percentages is reasonable

and prudent considering all relevant factors pertaining to the real property. However, in no event shall the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the property senior thereto, exceed 80 percent of the current fair market value of improved real property or 50 percent of the current fair market value of unimproved real property, except in the case of a single-family zoned lot or parcel as defined in paragraph (1), which shall not exceed 65 percent of the current fair market value of that lot or parcel, plus the amount insured as specified in paragraph (1). A written statement shall be prepared by the broker that sets forth the material considerations and facts that the broker relies upon for his or her determination, which shall be retained as a part of the broker's record of the transaction. Either a copy of the statement or the information contained therein shall be included in the disclosures required pursuant to subdivision (k).

(3) A copy of the appraisal or the broker's evaluation shall be delivered to each purchaser. The broker shall advise purchasers of their right to receive a copy. For purposes of this paragraph, ''appraisal'' means a written estimate of value based upon the assembling, analyzing, and reconciling of facts and value indicators for the real property in question. A broker shall not purport to make an appraisal unless the person so employed is qualified on the basis of special training, preparation, or experience.

(h) The documentation of the transaction shall require that (1) a default upon any interest or note is a default upon all interests or notes and (2) the holders of more than 50 percent of the record beneficial interests of the notes or interests may govern the actions to be taken on behalf of all holders in accordance with Section 2941.9 of the Civil Code in the event of default or foreclosure for matters that require direction or approval of the holders, including designation of the broker, servicing agent, or other person acting on their behalf, and the sale, encumbrance, or lease of real property owned by the holders resulting from foreclosure or receipt of a deed in lieu of foreclosure. The terms called for by this subdivision may be included in the deed of trust, in the assignment of interests, or in any other documentation as is necessary or appropriate to make them binding on the parties.

(i) (1) The broker shall not accept any purchase or loan funds or other consideration from a prospective lender or purchaser, or directly or indirectly cause the funds or other consideration to be deposited in an escrow or trust account, except as to a specific loan or note secured by a deed of trust that the broker owns, is authorized to negotiate, or is unconditionally obligated to buy.

(2) All funds received by the broker from the purchasers or lenders shall be handled in accordance with Section 10145 for disbursement to

the persons thereto entitled upon recordation of the interests of the purchasers or lenders in the note and deed of trust. No provision of this section shall be construed as modifying or superseding applicable law regulating the escrowholder in any transaction or the handling of the escrow account.

(3) The books and records of the broker or servicing agent, or both, shall be maintained in a manner that readily identifies transactions under this section and the receipt and disbursement of funds in connection with these transactions.

(4) If required by paragraph (3) of subdivision (j), the review by the independent certified public accountant shall include a sample of transactions, as reflected in the records of the trust account required pursuant to paragraph (1) of subdivision (j), and the bank statements and supporting documents. These documents shall be reviewed for compliance with this section with respect to the handling and distribution of funds. The sample shall be selected at random by the accountant from all these transactions and shall consist of the following: (A) three sales made or 5 percent of the sales made pursuant to this section during the period for which the examination is conducted, whichever is greater, and (B) 10 payments processed or 2 percent of payments processed under this section during the period for which the examination is conducted, whichever is greater.

(5) For the purposes of this subdivision, the transaction that constitutes a "sale" is the series of transactions by which a series of notes of a maker, or the interests in the note of a maker, are sold or issued to their various purchasers under this section, including all receipts and disbursements in that process of funds received from the purchasers or lenders. The transaction that constitutes a "payment," for the purposes of this subdivision, is the receipt of a payment from the person obligated on the note or from some other person on behalf of the person so obligated, including the broker or servicing agent, and the distribution of that payment to the persons entitled thereto. If a payment involves an advance paid by the broker or servicing agent as the result of a dishonored check, the inspection shall identify the source of funds from which the payment was made or, in the alternative, the steps that are reasonably necessary to determine that there was not a disbursement of trust funds. The accountant shall inspect for compliance with the following specific provisions of this section: paragraphs (1), (2), and (3) of subdivision (i) and paragraphs (1) and (2) of subdivision (j).

(6) Within 30 days of the close of the period for which the report is made, or within any additional time as the commissioner may in writing allow in a particular case, the accountant shall forward to the broker or servicing agent, as the case may be, and to the commissioner, the report of the accountant, stating that the inspection was performed in

accordance with this section, listing the sales and the payments examined, specifying the nature of the deficiencies, if any, noted by the accountant with respect to each sale or payment, together with any further information as the accountant may wish to include, such as corrective steps taken with respect to any deficiency so noted, or stating that no deficiencies were observed. If the broker meets the threshold criteria of Section 10232, the report of the accountant shall be submitted as part of the quarterly reports required under Section 10232.25.

(j) The notes or interests shall be sold subject to a written agreement that obligates a licensed real estate broker, or a person exempted from the licensing requirement for real estate brokers under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4, to act as agent for the purchasers or lenders to service the note or notes and deed of trust, including the receipt and transmission of payments and the institution of foreclosure proceedings in the event of a default. A copy of this servicing agreement shall be delivered to each purchaser. The broker shall offer to the lenders or purchasers the services of the broker or one or more affiliates of the broker, or both, as servicing agent for each transaction conducted pursuant to this section. The agreement shall require all of the following:

(1) (A) That payments received on the note or notes be deposited immediately to a trust account maintained in accordance with this section and with the provisions for trust accounts of licensed real estate brokers contained in Section 10145 and Article 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of the California Code of Regulations.

(B) That payments deposited pursuant to subparagraph (A) shall not be commingled with the assets of the servicing agent or used for any transaction other than the transaction for which the funds are received.

(2) That payments received on the note or notes shall be transmitted to the purchasers or lenders pro rata according to their respective interests within 25 days after receipt thereof by the agent. If the source for the payment is not the maker of the note, the agent shall inform the purchasers or lenders of the source for payment. A broker or servicing agent who transmits to the purchaser or lenders the broker's or servicing agent's own funds to cover payments due from the borrower but unpaid as a result of a dishonored check may recover the amount of the advances from the trust fund when the past due payment is received. However, this section does not authorize the broker, servicing agent, or any other person to issue, or to engage in any practice constituting, any guarantee or to engage in the practice of advancing payments on behalf of the borrower.

(3) If the broker or person who is or becomes the servicing agent for notes or interests sold pursuant to this section upon which the payments

due during any period of three consecutive months in the aggregate exceed one hundred twenty-five thousand dollars ($125,000) or the number of persons entitled to the payments exceeds 120, the trust account or accounts of that broker or affiliate shall be inspected by an independent certified public accountant at no less than three-month intervals during the time the volume is maintained. Within 30 days after the close of the period for which the review is made, the report of the accountant shall be forwarded as provided in paragraph (5) of subdivision (i). If the broker is required to file an annual report pursuant to subdivision (n) or Section 10232.2, the quarterly report pursuant to this subdivision need not be filed for the last quarter of the year for which the annual report is made. For the purposes of this subdivision, an affiliate of a broker is any person controlled by, controlling, or under common control with the broker.

(4) Unless the servicing agent will receive notice pursuant to Section 2924b of the Civil Code, the servicing agent shall file a request for notice of default upon any prior encumbrances and promptly notify the purchasers or lenders of any default on the prior encumbrances or on the note or notes subject to the servicing agreement.

(5) The servicing agent shall promptly forward copies of the following to each purchaser or lender:

(A) Any notice of trustee sale filed on behalf of the purchasers or lenders.

(B) Any request for reconveyance of the deed of trust received on behalf of the purchasers or lenders.

(k) The broker shall disclose in writing to each purchaser or lender the material facts concerning the transaction on a disclosure form adopted or approved by the commissioner pursuant to Section 10232.5, subject to the following:

(1) The disclosure form shall include a description of the terms upon which the note and deed of trust are being sold, including the terms of the undivided interests being offered therein, including the following:

(A) In the case of the sale of an existing note:

(i) The aggregate sale price of the note.

(ii) The percent of the premium over or discount from the principal balance plus accrued but unpaid interest.

(iii) The effective rate of return to the purchasers if the note is paid according to its terms.

(iv) The name and address of the escrowholder for the transaction.

(v) A description of, and the estimated amount of, each cost payable by the seller in connection with the sale and a description of, and the estimated amount of, each cost payable by the purchasers in connection with the sale.

(B) In the case of the origination of a note:

(i) The name and address of the escrowholder for the transaction.

(ii) The anticipated closing date.

(iii) A description of, and the estimated amount of, each cost payable by the borrower in connection with the loan and a description of, and the estimated amount of, each cost payable by the lenders in connection with the loan.

(2) A copy of the written statement or information contained therein, as required by paragraph (2) of subdivision (g), shall be included in the disclosure form.

(3) Any interest of the broker or affiliate in the transaction, as described in subdivision (d), shall be included with the disclosure form.

(4) When the particular circumstances of a transaction make information not specified in the disclosure form material or essential to keep the information provided in the form from being misleading, and the other information is known to the broker, the other information shall also be provided by the broker.

(*l*) The broker or servicing agent shall furnish any purchaser of a note or interest, upon request, with the names and addresses of the purchasers of the other notes or interests in the loan.

(m) No agreement in connection with a transaction covered by this section shall grant to the real estate broker, the servicing agent, or any affiliate of the broker or agent the option or election to acquire the interests of the purchasers or lenders or to acquire the real property securing the interests. This subdivision shall not prohibit the broker or affiliate from acquiring the interests, with the consent of the purchasers or lenders whose interests are being purchased, or the property, with the consent of the purchasers or lenders, if the consent is given at the time of the acquisition.

(n) Each broker who conducts transactions under this section, or broker or person who becomes the servicing agent for notes or interest sold pursuant to this section, who meets the criteria of paragraph (3) of subdivision (j) shall file with the commissioner an annual report of a review of its trust account. The report shall be prepared and filed in accordance with subdivision (a) of Section 10232.2 and the rules and procedures thereunder of the commissioner. That report shall cover the broker's transactions under this section and, if the broker also meets the threshold criteria set forth in Section 10232, the broker's transactions subject to that section shall be included as well.

(o) Each broker conducting transactions pursuant to this section, or broker or person who becomes the servicing agent for notes or interest sold pursuant to this section, who meets the criteria of paragraph (3) of subdivision (j) shall file with the commissioner a report of the transactions that is prepared in accordance with subdivision (c) of Section 10232.2. If the broker also meets the threshold criteria of Section

10232, the report shall include the transactions subject to that section as well. This report shall be confidential pursuant to subdivision (f) of Section 10232.2.

(p) The jurisdiction of the Commissioner of Corporations under the Corporate Securities Law of 1968 shall be neither limited nor expanded by this section. Nothing in this section shall be construed to supersede or restrict the application of the Corporate Securities Law of 1968. A transaction under this section shall not be construed to be a transaction involving the issuance of securities subject to authorization by the Real Estate Commissioner under subdivision (e) of Section 25100 of the Corporations Code.

(q) Nothing in this section shall be construed to change the agency relationships between the parties where they exist or limit in any manner the fiduciary duty of brokers to borrowers, lenders, and purchasers of notes or interests in transactions subject to this section.

(r) For the purposes of this section, the following definitions shall apply:

(1) ''Broker'' means a person licensed as a broker under this part.

(2) ''Affiliate'' means a person controlled by, controlling, or under common control with, the broker.

(3) ''Servicing agent'' means the real estate broker or person exempted from the licensing requirements for real estate brokers under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4, to act as agent for the purchasers or lenders to service the notes and deeds of trust, including the handling the receipt and transmission of payments and the institution of foreclosure proceedings in the event of a default.

(4) Except as provided in paragraph (4) of subdivision (i), the terms ''sale'' and ''offer to sell,'' shall have the same meaning as set forth in Section 25017 of the Corporations Code and include the acts of negotiating and arranging the transaction.

(s) (1) If any person other than a real estate broker makes or keeps any of the books, accounts, or other records maintained in connection with a transaction described in this section, the provisions of this section and of any regulation or order issued under this section shall apply to the person with respect to the performance of those services and with respect to those books, accounts, and other records to the same extent as if the person were the broker.

(2) If any person other than an affiliate of a broker makes or keeps any of the books, accounts, or other records maintained in connection with a transaction described in this section, or in the case of an affiliate other than a parent or subsidiary of the broker, the provisions of this section and of any regulation or order issued under this section shall apply to the person with respect to those books, accounts, and other records to the same extent as if the person were the affiliate.

SEC. 3. Section 10240 of the Business and Professions Code is amended to read:

10240. (a) Every real estate broker, upon acting within the meaning of subdivision (d) of Section 10131, who negotiates a loan to be secured directly or collaterally by a lien on real property shall, within three business days after receipt of a completed written loan application or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a statement in writing, containing all the information required by Section 10241. It shall be personally signed by the borrower and by the real estate broker negotiating the loan or by a real estate licensee acting for the broker in negotiating the loan. When so executed, an exact copy thereof shall be delivered to the borrower at the time of its execution. The real estate broker negotiating the loan shall retain on file for a period of three years a true and correct copy of the statement as signed by the borrower.

No real estate licensee shall permit the statement to be signed by a borrower if any information required by Section 10241 is omitted.

(b) For the purposes of applying the provisions of this article, a real estate broker is acting within the meaning of subdivision (d) of Section 10131 if he or she solicits borrowers, or causes borrowers to be solicited, through express or implied representations that the broker will act as an agent in arranging a loan, but in fact makes the loan to the borrower from funds belonging to the broker.

(c) In a federally regulated residential mortgage loan transaction in which the principal loan amount exceeds the principal loan levels set forth in Section 10245, a real estate broker satisfies the requirements of this section if the borrower receives (1) a ''good faith estimate'' that satisfies the requirements of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A. 2601 et seq.), and that sets forth the broker's real estate license number and a clear and conspicuous statement on the face of the document stating that the ''good faith estimate'' does not constitute a loan commitment, (2) all applicable disclosures required by the Truth in Lending Act (15 U.S.C.A. 1601 et seq.), and (3) if the loan contains a balloon payment provision, the disclosure described in subdivision (h) of Section 10241, the balloon disclosure required for that loan by Fannie Mae or Freddie Mac, or an alternative disclosure determined by the commissioner to satisfy the requirements of the Truth in Lending Act.

Prior to becoming obligated on the loan the borrower shall acknowledge, in writing, receipt of the ''good faith estimate'' and all applicable disclosures required by the Truth in Lending Act. The real estate broker shall retain on file for a period of three years a true and correct copy of the signed acknowledgment and a true and correct copy

of the ''good faith estimate'' and all applicable disclosures required by the Truth in Lending Act as acknowledged by the borrower.

SEC. 4. Section 10471 of the Business and Professions Code is amended to read:

10471. (a) When an aggrieved person obtains (1) a final judgment in a court of competent jurisdiction, including, but not limited to, a criminal restitution order issued pursuant to subdivision (f) of Section 1202.4 of the Penal Code or Section 3663 of Title 18 of the United States Code, or (2) an arbitration award that includes findings of fact and conclusions of law rendered in accordance with the rules established by the American Arbitration Association or another recognized arbitration body, and in accordance with Sections 1281 to 1294.2, inclusive, of the Code of Civil Procedure where applicable, and where the arbitration award has been confirmed and reduced to judgment pursuant to Section 1287.4 of the Code of Civil Procedure, against a defendant based upon the defendant's fraud, misrepresentation, or deceit, made with intent to defraud, or conversion of trust funds, arising directly out of any transaction in which the defendant, while licensed under this part, performed acts for which a real estate license was required, the aggrieved person may, upon the judgment becoming final, file an application with the Department of Real Estate for payment from the Recovery Account, within the limitations specified in Section 10474, of the amount unpaid on the judgment that represents an actual and direct loss to the claimant in the transaction. As used in this chapter, ''court of competent jurisdiction'' includes the federal courts, but does not include the courts of another state.

(b) The application shall be delivered in person or by certified mail to an office of the department not later than one year after the judgment has become final.

(c) The application shall be made on a form prescribed by the department, verified by the claimant, and shall include the following:

(1) The name and address of the claimant.

(2) If the claimant is represented by an attorney, the name, business address, and telephone number of the attorney.

(3) The identification of the judgment, the amount of the claim and an explanation of its computation.

(4) A detailed narrative statement of the facts in explanation of the allegations of the complaint upon which the underlying judgment is based.

(5) (A) Except as provided in subparagraph (B), a statement by the claimant, signed under penalty of perjury, that the complaint upon which the underlying judgment is based was prosecuted conscientiously and in good faith. As used in this section, ''conscientiously and in good faith'' means that no party potentially liable to the claimant in the underlying

transaction was intentionally and without good cause omitted from the complaint, that no party named in the complaint who otherwise reasonably appeared capable of responding in damages was dismissed from the complaint intentionally and without good cause, and that the claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the Recovery Account.

(B) For the purpose of an application based on a criminal restitution order, all of the following statements by the claimant:

(i) The claimant has not intentionally and without good cause failed to pursue any person potentially liable to the claimant in the underlying transaction other than a defendant who is the subject of a criminal restitution order.

(ii) The claimant has not intentionally and without good cause failed to pursue in a civil action for damages all persons potentially liable to the claimant in the underlying transaction who otherwise reasonably appeared capable of responding in damages other than a defendant who is the subject of a criminal restitution order.

(iii) The claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the Recovery Account.

(6) The name and address of the judgment debtor or, if not known, the names and addresses of persons who may know the judgment debtor's present whereabouts.

(7) The following representations and information from the claimant:

(A) That he or she is not a spouse of the judgment debtor nor a personal representative of the spouse.

(B) That he or she has complied with all of the requirements of this chapter.

(C) That the judgment underlying the claim meets the requirements of subdivision (a).

(D) A description of searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets liable to be sold or applied to satisfaction of the judgment, an itemized valuation of the assets discovered, and the results of actions by the claimant to have the assets applied to satisfaction of the judgment.

(E) That he or she has diligently pursued collection efforts against all judgment debtors and all other persons liable to the claimant in the transaction that is the basis for the underlying judgment.

(F) That the underlying judgment and debt have not been discharged in bankruptcy, or, in the case of a bankruptcy proceeding that is open at or after the time of the filing of the application, that the judgment and debt have been declared to be nondischargeable.

(G) That the application was mailed or delivered to the department no later than one year after the underlying judgment became final.

(d) If the claimant is basing his or her application upon a judgment against a salesperson, and the claimant has not obtained a judgment against that salesperson's employing broker, if any, or has not diligently pursued the assets of that broker, the application shall be denied for failure to diligently pursue the assets of all other persons liable to the claimant in the transaction unless the claimant can demonstrate, by clear and convincing evidence, either that the salesperson was not employed by a broker at the time of the transaction, or that the salesperson's employing broker would not have been liable to the claimant because the salesperson was acting outside the scope of his or her employment by the broker in the transaction.

(e) The application form shall include detailed instructions with respect to documentary evidence, pleadings, court rulings, the products of discovery in the underlying litigation, and a notice to the applicant of his or her obligation to protect the underlying judgment from discharge in bankruptcy, to be appended to the application.

(f) An application for payment from the Recovery Account that is based on a criminal restitution order shall comply with all of the requirements of this chapter. For the purpose of an application based on a criminal restitution order, the following terms have the following meanings:

(1) ''Judgment'' means the criminal restitution order.

(2) ''Complaint'' means the facts of the underlying transaction upon which the criminal restitution order is based.

(3) ''Judgment debtor'' means any defendant who is the subject of the criminal restitution order.

The amendments to this section made at the July 1997–98 Regular Session shall become operative July 1, 2000.

SEC. 5. Section 10471.1 of the Business and Professions Code is amended to read:

10471.1. (a) The claimant shall serve a copy of the notice prescribed in subdivision (e) together with a copy of the application upon the judgment debtor by personal service, by certified mail, or by publication, as set forth in subdivision (b).

(b) If the judgment debtor holds an unexpired and unrevoked license issued by the department, service of the notice and a copy of the application may be made by certified mail addressed to the judgment debtor at the latest business or residence address on file with the department. If the judgment debtor does not hold an unexpired and unrevoked license issued by the department and personal service cannot be effected through the exercise of reasonable diligence, the claimant shall serve the judgment debtor by one publication of the notice in each

of two successive weeks in a newspaper of general circulation published in the county in which the judgment debtor was last known to reside.

(c) If the application is served upon the judgment debtor by certified mail, service is complete five days after mailing if the place of address is within the State of California, 10 days after mailing if the place of address is outside the State of California but within the United States, and 20 days after mailing if the place of address is outside the United States. Personal service is complete on the date of service. Service by publication is complete upon completion of the second week of publication.

(d) If a judgment debtor wishes to contest payment of an application by the commissioner, he or she shall mail or deliver a written response to the application addressed to the department at its headquarters office within 30 days after service of the notice and application, and shall mail or deliver a copy of the response to the claimant. If a judgment debtor fails to mail or deliver a timely response, he or she shall have waived his or her right to present objections to payment.

(e) The notice served upon the judgment debtor shall include the following statement:

''NOTICE: Based upon a judgment entered against you in favor of _____ , application for payment from the
(name of claimant)
Recovery Account of the Real Estate Fund is being made to the Department of Real Estate.

''If payment is made from the Recovery Account, all licenses and license rights that you have under the Real Estate Law will be automatically suspended on the date of payment and cannot be reinstated until the Recovery Account has been reimbursed for the amount paid plus interest at the prevailing rate.

''If you wish to contest payment by the Real Estate Commissioner, you must file a written response to the application addressed to the Department of Real Estate at ____ within 30 days after mailing, delivery, or publication of this notice and mail or deliver a copy of that response to the claimant. If you fail to do so, you will have waived your right to present your objections to payment.''

(f) If a judgment debtor fails to mail or deliver a written response to the application with the department within 30 days after personal service, mailing, or final publication of the notice, the judgment debtor shall not thereafter be entitled to notice of any action taken or proposed to be taken by the commissioner with respect to the application.

SEC. 6. Section 10471.5 of the Business and Professions Code is amended to read:

10471.5. (a) The commissioner shall give notice of a decision rendered with respect to the application to the claimant and to a judgment debtor who has filed a timely response to the application in accordance with Section 10471.1.

(b) If the application is denied, the notice to the claimant and judgment debtor shall include the following:

''Claimant's application has been denied. If the claimant wishes to pursue the application in court, the claimant must file the application as follows in a superior court of this state not later than six months after receipt of this notice, pursuant to Section 10472 of the Business and Professions Code. If the underlying judgment is a California state court judgment, the application shall be filed in the court in which the underlying judgment was entered. If the underlying judgment is a federal court judgment, the application shall be filed in the superior court of any county within California that would have been a proper venue if the underlying lawsuit had been filed in a California state court, or in the Superior Court of the County of Sacramento.''

(c) If the decision of the commissioner is to make a payment to the claimant out of the Recovery Account, the following notice shall be given to the judgment debtor along with a copy of the decision of the commissioner:

''The decision of the Real Estate Commissioner on the application of ____ is to pay $____ from the Recovery Account. A copy of that decision is enclosed.

''Pursuant to Section 10475 of the Business and Professions Code, all of your licenses and license rights under the Real Estate Law will be suspended effective on the date of the payment, and you will not be eligible for reinstatement of any license issued under authority of the Real Estate Law until you have reimbursed the Recovery Account for this payment plus interest at the prevailing legal rate.''

''If you desire a judicial review of the suspension of your licenses and license rights, you may petition the superior court for a writ of mandamus. If the underlying judgment is a California state court judgment, the petition shall be filed in the court in which the judgment was entered. If the underlying judgment is a federal court judgment, the petition shall be filed in the superior court of any county within California that would have been a proper venue if the underlying lawsuit had been filed in a California state court, or in the Superior Court of the County of Sacramento. To be timely, the petition must be filed with the court within 30 days of receipt of this notice.''

SEC. 7. Section 10471.6 of the Business and Professions Code is amended to read:

10471.6. If, at any time prior to the rendering of a decision on an application, the commissioner makes a preliminary determination that

the aggregate valid applications of all aggrieved persons against that licensee are likely to exceed the limits of liability in Section 10474, the commissioner shall, in lieu of further administrative proceedings, initiate a proration proceeding pursuant to Section 10474.5 in a superior court of any county in this state that would be a proper court for the filing of a denied application or writ of mandamus pursuant to Section 10471.5.

SEC. 8. Section 10472 of the Business and Professions Code is amended to read:

10472. (a) A claimant against whom the commissioner has rendered a decision denying an application pursuant to Section 10471 may, within six months after the mailing of the notice of the denial, file a verified application in superior court for an Order Directing Payment Out of the Recovery Account based upon the grounds set forth in the application to the commissioner. If the underlying judgment is a California state court judgment, the application shall be filed in the court in which the underlying judgment was entered. If the underlying judgment is a federal court judgment, the application shall be filed in the superior court of any county within California that would have been a proper venue if the underlying lawsuit had been filed in a California state court, or in the Superior Court of the County of Sacramento.

(b) A copy of the verified application shall be served upon the commissioner and upon the judgment debtor. A certificate or affidavit of service shall be filed by the claimant with the court. Service on the commissioner may be made by certified mail addressed to the headquarters office of the department. Service upon a judgment debtor may be made in accordance with Section 10471.1. The notice served upon the judgment debtor shall read as follows:

''NOTICE: An application has been filed with the court for a payment from the Recovery Account that was previously denied by the Real Estate Commissioner.

''If the Department of Real Estate makes a payment from the Recovery Account pursuant to court order, all of your licenses and license rights under the Real Estate Law will be automatically suspended until the Recovery Account has been reimbursed for the amount paid plus interest at the prevailing rate.

''If you wish to defend in court against this application, you must file a written response with the court within 30 days after having been served with a copy of the application. If you do not file a written response, you will have waived your right to defend against the application.''

SEC. 9. Section 10472.1 of the Business and Professions Code is amended to read:

10472.1. (a) The commissioner and the judgment debtor shall each have 30 days after being served with the application in which to file a

written response. The court shall thereafter set the matter for hearing upon the petition of the claimant. The court shall grant a request of the commissioner for a continuance of as much as 30 days and may, upon a showing of good cause by any party, continue the hearing as the court deems appropriate.

(b) The claimant shall have the burden of proving compliance with the requirements of Section 10471 by competent evidence at an evidentiary hearing. The claimant shall be entitled to a de novo review of the merits of the application as contained in the administrative record.

(c) If the judgment debtor fails to file a written response to the application, the application may be compromised or settled by the commissioner at any time during the court proceedings and the court shall, upon joint petition of the claimant and the commissioner, issue an order directing payment out of the Recovery Account.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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.

CHAPTER 390

An act to amend, repeal, and add Section 4730.3 of the Health and Safety Code, relating to sanitation districts.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

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

(a) Under current law, when a county sanitation district first annexes territory within an abutting county, the board of supervisors of the abutting county has at least one representative on the county sanitation board.

(b) The Sacramento Regional County Sanitation District, the City of West Sacramento, and the County of Yolo have agreed that it is in their best mutual interests for the Sacramento Regional County Sanitation District to construct and utilize a sewer interceptor line through the City of West Sacramento and a portion of the unincorporated area of Yolo

County to provide sewer service to residents in the Natomas area of Sacramento County and to residents in the City of West Sacramento.

(c) The County of Yolo Board of Supervisors has confirmed that it is acting in furtherance of a continued positive and constructive working relationship between it and the other governmental entities within the Sacramento region by consenting to the presiding officer of the City of West Sacramento holding the permanent seat on the Sacramento Regional County Sanitation District Board of Directors, and consenting to having a limited term seat on the Board of Directors of the Sacramento Regional County Sanitation District subject to limitations set forth in this act.

SEC. 2. Section 4730.3 of the Health and Safety Code is amended to read:

4730.3. (a) Notwithstanding Sections 4730, 4730.2, and 4832.5 or any other provision of law, the governing board of a sanitation district in the County of Sacramento shall be constituted in accordance with this section.

(b) The governing body of a sanitation district in the County of Sacramento shall be a board of directors composed of an odd number of not less than five members. If the district includes no territory that is within a city, the Sacramento County Board of Supervisors shall be the board of directors of the sanitation district.

(c) If the sanitation district includes territory that is within a city, the board of directors of the sanitation district shall be composed of the Sacramento County Board of Supervisors and the presiding officer of the governing body of each of those cities. If the sanitation district also includes territory in the City of West Sacramento in Yolo County, the sanitation district board of directors shall also include the presiding officer of the governing body of the City of West Sacramento and the Member of the Yolo County Board of Supervisors whose supervisorial district includes all, or the greater portion, of the population of the City of West Sacramento. If those members of the governing body of the sanitation district constitute an even number, the Chairperson of the Sacramento County Board of Supervisors shall have an additional vote on the board of directors of the sanitation district.

(d) The governing body of each city that has a representative on the board of directors of the sanitation district may designate one of its members to act in the place of its presiding officer in the absence, inability to act, or refusal to act, of its presiding officer. The governing body of any of those cities may designate a member of the county board of supervisors to serve as its representative member on the board of directors of the sanitation district in the place of the presiding officer of its governing body, in which case, that supervisor shall have one vote for each city represented by that supervisor. The Yolo County Board of

Supervisors may designate one of its members to act in the absence, inability to act, or refusal to act, of the Member of the Yolo County Board of Supervisors whose supervisorial district includes all, or the greater portion of, the population of the City of West Sacramento.

(e) (1) The representative from the Yolo County Board of Supervisors shall be entitled to vote on all sanitation district matters that come before the sanitation district board of directors, with the exception of the following:

(A) Any and all matters directly related to the setting of sanitation district fees, rates, and charges for district ratepayers.

(B) Any and all matters directly related to the determination of the composition of the sanitation district board of directors and the district's organizational structure.

(2) Except for a lack of an entitlement to vote on the matters specified in paragraph (1), the representative from the Yolo County Board of Supervisors shall otherwise be entitled to fully participate in the sanitation district board's consideration of these matters as a member of the sanitation district board.

(f) This section shall remain in effect only until January 1, 2005, or until the date the board of directors of the sanitation district notifies the Legislature that construction of a pipeline facility in the unincorporated portion of Yolo County is completed, whichever is later, and as of that date is repealed, unless a later enacted statute, that is enacted before that date deletes or extends that date.

SEC. 3. Section 4730.3 is added to the Health and Safety Code, to read:

4730.3. (a) Notwithstanding Sections 4730, 4730.2, and 4832.5 or any other provision of law, the governing board of a sanitation district in the County of Sacramento shall be constituted in accordance with this section.

(b) The governing body of a sanitation district in the County of Sacramento shall be a board of directors composed of an odd number of not less than five members. If the district includes no territory that is within a city, the Sacramento County Board of Supervisors shall be the board of directors of the sanitation district.

(c) If the sanitation district includes territory that is within a city, the board of directors of the sanitation district shall be composed of the Sacramento County Board of Supervisors and the presiding officer of the governing body of each of those cities. If the sanitation district also includes territory in the City of West Sacramento in Yolo County, the sanitation district board of directors shall also include the presiding officer of the governing body of the City of West Sacramento. If those members of the governing body of the sanitation district constitute an even number, the Chairperson of the Sacramento County Board of

Supervisors shall have an additional vote on the board of directors of the sanitation district.

(d) The governing body of each city that has a representative on the board of directors of the sanitation district may designate one of its members to act in the place of its presiding officer in the absence, inability to act, or refusal to act, of its presiding officer. The governing body of any of those cities may designate a member of the county board of supervisors to serve as its representative member on the board of directors of the sanitation district in the place of the presiding officer of its governing body, in which case, that supervisor shall have one vote for each city represented by that supervisor.

(e) This section shall become operative on January 1, 2005, or on the date the board of directors of the sanitation district notifies the Legislature that construction of a pipeline facility in the unincorporated portion of Yolo County is completed, whichever is later.

SEC. 4. Due to the unique circumstances concerning the City of West Sacramento, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution.

CHAPTER 391

An act to amend Section 17942 of, and to repeal and add Section 17943 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 17942 of the Revenue and Taxation Code is amended to read:

17942. (a) In addition to the tax imposed under Section 17941, every limited liability company subject to tax under Section 17941 shall pay annually to this state a fee equal to:

(1) Nine hundred dollars ($900), if the total income from all sources reportable to this state for the taxable year is two hundred fifty thousand dollars ($250,000) or more, but less than five hundred thousand dollars ($500,000).

(2) Two thousand five hundred dollars ($2,500), if the total income from all sources reportable to this state for the taxable year is five

hundred thousand dollars ($500,000) or more, but less than one million dollars ($1,000,000).

(3) Six thousand dollars ($6,000), if the total income from all sources reportable to this state for the taxable year is one million dollars ($1,000,000) or more, but less than five million dollars ($5,000,000). Eleven thousand seven hundred ninety dollars ($11,790), if the total income from all sources reportable to this state for the taxable year is five million dollars ($5,000,000) or more.

(5) (A) This subdivision shall apply to taxable years beginning on or after January 1, 1997.

(6) The changes made to this subdivision by the act adding this paragraph shall apply to taxable years beginning on or after January 1, 2001.

(b) (1) For purposes of this section, ''total income'' means gross income, as defined in Section 24271, plus the cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer. However, ''total income'' shall not include allocation or attribution of income or gain or distributions made to a limited liability company in its capacity as a member of, or holder of an economic interest in, another limited liability company if the allocation or attribution of income or gain or distributions are directly or indirectly attributable to income that is subject to the payment of the fee described in this section.

(2) In the event a taxpayer is a commonly controlled limited liability company, the total income from all sources reportable to this state, taking into account any election under Section 25110, may be determined by the Franchise Tax Board to be the total income of all the commonly controlled limited liability company members if it determines that multiple limited liability companies were formed for the primary purpose of reducing fees payable under this section. A determination by the Franchise Tax Board under this subdivision may only be made with respect to one limited liability company in a commonly controlled group. However, each commonly controlled limited liability company shall be jointly and severally liable for the fee. For purposes of this section, commonly controlled limited liability companies shall include the taxpayer and any other partnership or limited liability company doing business (as defined in Section 23101) in this state and required to file a return under Section 18633 or 18633.5, in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

(c) The fee assessed under this section shall be due and payable on the date the return of the limited liability company is required to be filed under Section 18633.5, shall be collected and refunded in the same manner as the taxes imposed by this part, and shall be subject to interest and applicable penalties.

SEC. 2. Section 17943 of the Revenue and Taxation Code is repealed.

SEC. 3. Section 17943 is added to the Revenue and Taxation Code, to read:

17943. It is the intent of the Legislature that the amount of the annual fee described in Section 17942 shall apply to the taxable year beginning January 1, 2001, and subsequent taxable years, notwithstanding the results of any study prepared by the Franchise Tax Board and submitted to the Joint Legislative Budget Committee pursuant to former Section 17943.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 392

An act to amend Sections 22105 and 22109 of the Financial Code, relating to finance lenders.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 22105 of the Financial Code is amended to read:

22105. (a) Upon the filing of an application pursuant to Section 22101 or 22102 and the payment of the fees, the commissioner shall investigate the applicant, and its general partners and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests if the applicant is a partnership. If the applicant is a corporation, trust, or association, including an unincorporated organization, the commissioner shall investigate its principal officers, directors, and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities. If the commissioner determines that the applicant has satisfied this division and does not find facts constituting reasons for denial under Section 22109, the commissioner shall issue and deliver a license to the applicant.

For the purposes of this section, ''principal officers'' shall mean president, chief executive officer, treasurer, and chief financial officer, as may be applicable, and any other officer with direct responsibility for the conduct of the applicant's lending activities within the state.

(b) For purposes of subdivision (a), the investigation in connection with an application described in Section 22102 may be limited to the

information not already included in previous applications filed pursuant to this division.

SEC. 2. Section 22109 of the Financial Code is amended to read:

22109. (a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for any of the following reasons:

(1) A false statement of a material fact has been made in the application.

(2) Any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has, within the last 10 years (A) been convicted of or pleaded nolo contendere to a crime, or (B) committed any act involving dishonesty, fraud, or deceit, if the crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.

(3) The applicant or any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of a foreign jurisdiction.

(b) The application shall be considered withdrawn within the meaning of this section if the applicant fails to respond to a written notification of a deficiency in the application within 90 days of the date of the notification.

(c) The commissioner shall, within 60 days from the filing of a full and complete application for a license with the fees, either issue a license or file a statement of issues prepared in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

CHAPTER 393

An act to amend Section 1202 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 1202 of the Public Utilities Code is amended to read:

1202. The commission has the exclusive power:

(a) To determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or of a railroad by a street.

(b) To alter, relocate, or abolish by physical closing any crossing set forth in subdivision (a).

(c) To require, where in its judgment it would be practicable, a separation of grades at any crossing established and to prescribe the terms upon which the separation shall be made and the proportions in which the expense of the construction, alteration, relocation, or abolition of crossings or the separation of grades shall be divided between the railroad or street railroad corporations affected or between these corporations and the state, county, city, or other political subdivision affected.

(d) (1) To authorize on an application-by-application basis and supervise the operation of pilot projects to evaluate proposed crossing warning devices, new technology, or other additional safety measures at designated crossings, with the consent of the local jurisdiction, the affected railroad, and other interested parties, including, but not limited to, represented railroad employees.

(2) The Legislature finds and declares that for the communities of the state that are traversed by railroads, there is a growing need to mitigate train horn noise without compromising the safety of the public. Therefore, it is the intent of the Legislature that the commission may authorize both of the following pilot projects, after an application is filed and approved by the commission:

(A) To test the utility and safety of stationary, automated audible warning devices as an alternative to trains having to sound their horns as they approach highway-rail crossings in the communities of Roseville, Fremont, Newark, and Lathrop, and in any other location determined to be suitable by the commission.

(B) To authorize supplementary safety measures, as defined in Section 20153(a)(3) of Title 49 of the United States Code, for use on rail crossings. No new pilot project may be authorized after January 1, 2003. The commission shall report to the Legislature by March 31, 2004, on the outcome of this pilot project.

(3) In light of the pending proposed ruling by the Federal Railroad Administration on the use of locomotive horns at all highway-rail crossings across the nation, it would be in the best interest of the state for the commission to expedite the pilot projects authorized under paragraph (2) in order to contribute data to the federal rulemaking

process regarding the possible inclusion of stationary, automated warning devices as a safety measure option to the proposed federal rule.

CHAPTER 394

An act to amend Sections 48005.10, 48005.13, 48005.15, 48005.20, 48005.45, 48005.50, 48005.55 of, to amend and renumber Sections 45005.25 and 45005.30 of, to add Sections 48005.11 to, and to repeal Section 48005.40 of, the Education Code, relating to kindergarten readiness, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 45005.25 of the Education Code is amended and renumbered to read:

48005.25. (a) Notwithstanding any provision of law to the contrary, including, but not limited to, Section 48000, for the 2002–03 school year, and each school year thereafter in which a school district continues to participate in the program, the school district shall offer admission to kindergarten at the beginning of the school year, or at a later time in the same school year, only to children who will have their fifth birthday on or before September 1 of that school year. For a school district that is not implementing the pilot project authorized by this article on a districtwide basis, this subdivision applies only to children whose residence is in the regular attendance boundary of a participating school or who would otherwise attend that school under school assignment policies established in the school year prior to implementation of this pilot program.

(b) Notwithstanding any provision of law to the contrary, including, but not limited to, Section 48010, for the 2003–04 school year, and each school year thereafter in which a school district continues to participate in the program, a school district shall offer admission to first grade at the beginning of the school year, or at a later time in the same school year, only to children who will have their sixth birthday on or before September 1 of that school year. Kindergarten shall not be a prerequisite for enrollment in first grade pursuant to this article. For a school district that is not implementing the pilot project authorized by this article on a districtwide basis, this subdivision applies only to children whose

residence is in the regular attendance boundary of a participating school or who would otherwise attend that school under school assignment policies established in the school year prior to implementation of this pilot program.

(c) Notwithstanding subdivisions (a) and (b), the governing board of each school district participating in this program shall adopt a policy to allow, for good cause, admission of a child to kindergarten or to the first grade at the beginning of a school year in which the child's birthday will be after September 1, or at a later time in the same school year. It is the intent of the Legislature that this subdivision authorize rare exceptions for only the most gifted and socially mature children. Therefore, exceptions are limited to no more than the greater of either one child or the number of children determined by multiplying .01 times the prior school year P-2 average daily attendance in kindergarten within the participating school district or the school implementing the program, as applicable. A school or school district may not exceed this limitation without specific written approval from the Superintendent of Public Instruction upon consideration of a statement by the school or school district of the circumstances that meet the legislative intent regarding this subdivision.

SEC. 2. Section 45005.30 of the Education Code is amended and renumbered to read:

48005.30. (a) For the 2002–03 school year and each school year thereafter until the 2008–09 school year the Superintendent of Public Instruction shall allocate a grant of funds for a participating school district for each year of participation to cover the costs of developing and operating the school district kindergarten readiness program, including, but not limited to, the costs of administration and the costs associated with services provided to parents and children in the program. For any participating school district, annual funding pursuant to this paragraph shall be subject to the limitations and requirements of this subdivision and shall not exceed the per-pupil amount nor the total amount computed as follows:

(1) Five dollars ($5) per hour for each hour of attendance for every child participating in the kindergarten readiness program up to a maximum of 150 hours of attendance for each child. The amount per hour shall be adjusted annually, commencing with the 2003–04 school year for the inflation adjustment calculated pursuant to subdivision (b) of Section 42238.1.

(2) For purposes of total funding to a participating school district, the amount claimed may not exceed an amount equivalent to multiplying the amount in paragraph (1) by a number equal to 50 percent of the entire kindergarten P-2 average daily attendance for the 2001–02 school year of the school district or, in a school district that is not implementing the

pilot project authorized by this article on a districtwide basis, by a number equal to 50 percent of the kindergarten P-2 average daily attendance for the 2001–02 school year of the schools in the district that are implementing the program.

(b) For the 2002–03 school year, the Superintendent of Public Instruction shall allocate a one-time incentive grant to enhance transition of the school district for the reduced attendance that results from the program, to be determined by multiplying one-fourth of the kindergarten average daily attendance for the 2001–02 school year by the school district's base revenue limit per unit of average daily attendance. If a school district does not implement the program districtwide, this one-time incentive shall be determined by multiplying one-fourth of the specific portion of the district's kindergarten average daily attendance for the 2001–02 school year contributed by the implementing school or schools by the school district's base revenue limit per unit of average daily attendance.

(c) A participating school district that does not implement the program on a districtwide basis shall provide to the Superintendent of Public Instruction a statement certifying the following:

(1) P-2 average daily attendance in the implementing schools for the 2001–02 school year. The school district shall maintain these records for audit purposes. The Superintendent of Public Instruction may request documentation of the P-2 average daily attendance in schools implementing the program as deemed necessary to enforce the funding limits of this article.

(2) Attendance boundaries for the schools implementing the program will remain the same as they existed in the 2001–02 school year through the duration of the program unless the district submits an application to and receives approval from the State Board of Education. The State Board of Education shall only consider applications for attendance boundary changes for participating schools in cases where significant population changes necessitate the opening of new schools or the closing of existing schools. In order to preserve the integrity of the evaluation required by this article, it is the intent of the Legislature that a school district applying to participate in the program on a less than districtwide basis avoid implementation of the program in schools that can reasonably be foreseen to be subject to boundary changes within the timeframe of the pilot program authorized in this article. The State Board of Education may not approve boundary changes that do not meet the requirements and intent of this paragraph.

(3) The district has established procedures that restrict attendance in nonparticipating schools of the district for children residing in the attendance boundaries of the schools implementing the program.

(d) Total incentive funding for reduced P-2 average daily attendance provided pursuant to this article shall be subject to a statewide maximum funding level equal to the equivalent of 2,300 full annual units of average daily attendance multiplied by the statewide average school district revenue limit for the 2002–03 fiscal year as determined by the Department of Finance.

SEC. 3. Section 48005.10 of the Education Code is amended to read:

48005.10. (a) This article shall be known, and may be cited, as the Kindergarten Readiness Pilot Program.

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

(1) The available data indicate all of the following:

(A) By changing the age at which children generally enter kindergarten, California's children will be better prepared to enter into the academic environment that is required by the California content standards for kindergarten.

(B) Success in school is often related to socioeconomic status, English language fluency at school entry, and access to preschool. By providing a kindergarten readiness program for the children most at risk for low performance and delaying entry to allow all children time to become more developmentally ready to learn, pupils are more likely to succeed in school.

(C) Comparisons between California pupils and pupils in other states on national achievement tests in the later grades are likely to be more equitable if the entry age of California pupils is more closely aligned to that of most other states.

(D) Children who have attended an educationally based kindergarten readiness program, including, but not limited to, a quality state preschool, Head Start, or kindergarten readiness program, are better prepared academically and socially for the existing kindergarten curriculum, as reflected by the state adopted standards.

(2) The purpose of the pilot project established pursuant to this article is intended to test these data.

(3) For participating school districts, the change in enrollment required pursuant to this article will result in a decrease in the number of pupils enrolled in kindergarten classes for the class entering kindergarten in the 2002–03 school year. Thus, it is estimated that in participating school districts there will be a 25 percent decrease in the enrollment of the kindergarten class in the initial year of implementation .

(4) The school district revenue related provision of this article in Section 48005.30 is intended to fully fund participation in the program and provide an incentive to participate.

SEC. 4. Section 48005.11 is added to the Education Code, to read:

48005.11. A charter school is eligible to receive funding pursuant to this article. As a condition of receiving that funding, the charter school shall comply with all the requirements of this article. For purposes of this article, ''school districts'' means school districts or charter schools.

SEC. 5. Section 48005.13 of the Education Code is amended to read:

48005.13. (a) The Superintendent of Public Instruction shall establish and administer the Kindergarten Readiness Pilot Program to permit school districts to provide opportunities for children to enhance their readiness for kindergarten, thereby increasing their likelihood for future academic success.

(b) The Superintendent of Public Instruction shall convene an advisory panel to assist the department in developing its request for proposals, and in evaluating and selecting the proposals submitted to the department. The advisory panel shall include, but need not be limited to, a representative of each of the following:

(1) The Department of Finance.

(2) The Legislature.

(3) The California Research Bureau.

(4) The Legislative Analyst.

(5) The State Board of Education.

(6) The Secretary for Education.

(c) By February 1, 2002, the superintendent shall notify elementary and unified school districts maintaining kindergarten about the existence of this program, shall notify them about the procedures for participation, and shall request proposals for participation.

(d) Participation in the program by a school district shall be voluntary.

(e) A school district that elects to participate in the program shall apply to the Superintendent of Public Instruction by May 1, 2002, upon forms adopted by the superintendent for this purpose.

(f) The Superintendent of Public Instruction, with the advice of the advisory panel, and in consultation with the Secretary for Education, shall select participants from the group of applicants. The Superintendent of Public Instruction shall give priority to applicant school districts that are representative of the diversity of pupils and of the various types of school districts within the state. Priority shall, also, be given to unified school districts.

(g) Nothing in this article prohibits a school district from implementing the program in selected schools within the district if adequate records are kept to substantiate the accuracy of the declining enrollment incentive and limits on prekindergarten instruction funding provided pursuant to Section 48005.30.

SEC. 6. Section 48005.15 of the Education Code is amended to read:

48005.15. By July 1, 2002, each participant school district shall enter into an agreement with the Superintendent of Public Instruction setting forth the requirements under the program, including, but not limited to, all of the following:

(a) The participating school district shall make reasonable efforts to identify parents and guardians of children from three to five years of age who reside within the school district and to provide the parents and guardians with information regarding, and access to, services, programs, or methods, to assist them in assessing the level of readiness of a child to enter school.

(b) The effort set forth in paragraph (1) shall include, but need not be limited to, information regarding available care services, preschool programs, and educationally based kindergarten readiness programs. The school district may coordinate this effort with local parent-teacher organizations.

(c) ''Reasonable effort'' as used in this subdivision does not require that the school district individually contact every potential parent who resides within the school district.

(d) The school district shall provide assistance to parents or guardians who request assistance regarding activities that parents may initiate in preparing children for school.

(e) At a minimum, participating school districts shall supply parents or guardians with written readiness guidelines developed by the State Department of Education.

(f) Assistance provided pursuant to this section shall be based on generally accepted child development theory and may include information related to social and development readiness and professional consultations with teachers and school administrators.

(g) The participating school district shall make reasonable efforts to collect data and make it available to the independent evaluator, as specified in Section 48005.45.

SEC. 7. Section 48005.20 of the Education Code is amended to read:

48005.20. (a) Participating school districts shall offer enrollment in a kindergarten readiness program to eligible children in order to receive funding pursuant to this article. Participation by parents and children in a kindergarten readiness program shall be voluntary.

(b) If the school district implements the program districtwide, it shall offer a kindergarten readiness program to any eligible child who pre-enrolls in kindergarten and may offer it to eligible children who do not pre-enroll. If a school district implements the program in selected schools within the district, it shall offer a kindergarten readiness program

to any eligible child residing within the attendance boundary of the school who pre-enrolls in kindergarten and may offer it to eligible children residing within the attendance boundary of the school who do not pre-enroll.

(c) For purposes of this article, an eligible child is any child residing in the attendance boundary of a school or school district, as applicable, who will become eligible to enter kindergarten in the following year pursuant to Section 48005.25.

(d) Priority for enrollment in a kindergarten readiness program shall be provided to any child residing within the attendance boundary of the school or school district, as applicable, who has not previously attended a public or private preschool program.

(e) The kindergarten readiness program offered by a school district pursuant to this section shall consist solely of components designed to enhance the skills that are necessary for success in later education and shall include, but need not be limited to, all of the following:

(1) A program of sufficient duration and at times that reasonably allow participating children to attend at least 110 hours of kindergarten readiness activities and instruction.

(2) Programs that assist pupils in developing the motor and cognitive skills, including, but not limited to, language development, required to be successful in kindergarten.

(3) Activities that socialize pupils to the discipline of the school environment.

SEC. 8. Section 48005.40 of the Education Code is repealed.

SEC. 9. Section 48005.45 of the Education Code is amended to read:

48005.45. (a) The Superintendent of Public Instruction shall, by June 1, 2003, contract for an independent longitudinal evaluation regarding the effects of the change in the entry age for kindergarten and first grade pursuant to this article. In selecting the independent evaluator, awarding the contract pursuant to this section, and in monitoring performance under the contract, the Superintendent of Public Instruction shall consult with the advisory panel convened pursuant to subdivision (b) of Section 48005.13.

(b) The evaluation shall be based upon samples of sufficient size and diversity to allow results to be reported separately for pupils of different ethnicity, socioeconomic status, and primary language, and results of the evaluation shall be so reported.

(c) The primary purpose of the evaluation is to determine whether this entry age change results in improved readiness for school and an improvement in academic achievement among participating children.

(d) The evaluation shall use representative sampling to identify the change's effects on all of the following:

(1) Academic achievement, as measured by standardized tests, as compared with pupils not participating in the program.

(2) Behavioral problems, as measured by objective data including, but not limited to, suspension and expulsion rates, as compared with pupils not participating in the program.

(3) Academic problems, as measured by referrals to special education and remedial programs, as compared with pupils not participating in the program.

(4) Age of kindergarten entry and previous educationally based preschool experience, including, but not limited to, access to child care and preschool by parents or guardians.

(5) Overall retention rates in kindergarten and in subsequent grades.

(6) Participation in remedial, supplemental, or summer school programs.

(7) Class size.

(8) Number of pupils participating in kindergarten.

(9) Number of pupils participating in the kindergarten readiness programs.

(10) Differences, if any, between programs with full preschool participation, and those with partial or no preschool.

(11) Childcare difficulties caused by the admission age change.

(12) Demographic breakdown of participants and nonparticipants, including, but not limited to, socioeconomic and ethnic demographics.

(13) Facilities difficulties, if any, encountered by participating school districts.

(14) The ability of parents to gain access to the program, disaggregated by ethnic, primary language, and socioeconomic status.

(e) It is the intent of the Legislature that funding for this evaluation be included in the Budget Act or a bill related to the Budget Act. It is the intent of the Legislature to subsequently increase the number of hours funded for the kindergarten readiness program if the reports pursuant to this section indicate that the increase would be beneficial.

(f) (1) The independent evaluator shall report to the Legislature, the Governor, the Superintendent of Public Instruction, the State Board of Education, and the Secretary for Education.

(2) The initial report shall be filed by June 1, 2005. The interim report shall be filed by January 1, 2007. The final report shall be filed by January 1, 2008.

SEC. 10. Section 48005.50 of the Education Code is amended to read:

48005.50. (a) The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the Office of the Superintendent of Public Instruction for a statewide public information campaign to notify school districts and parents of the availability and

goals of the Kindergarten Readiness Pilot Program as necessary and for other state operations costs to implement this article in a timely manner.

(b) The State Board of Education may adopt regulations related to the administration of the article and the distribution of funding for purposes of this article. The regulations shall preserve the flexibility of school districts to design and operate kindergarten readiness programs within the parameters established by this article.

SEC. 11. Section 48005.55 of the Education Code is amended to read:

48005.55. This article shall become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow school districts enough time to make necessary plans regarding participation in the Kindergarten Readiness Pilot Program, it is necessary that this act take effect immediately.

CHAPTER 395

An act to amend Sections 34052, 50400.5, 50531, 50532, 50545, 50740, and 50748.1 of, to amend the heading of Chapter 3.5 (commencing with Section 50530) of Part 2 of Division 31 of, to amend, renumber, and add Section 50530 of, to repeal Sections 50502.5, 50532.5, and 50740.1 of, and to repeal Chapter 3.1 (commencing with Section 50515) of Part 2 of Division 31 of, the Health and Safety Code, relating to housing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 34052 of the Health and Safety Code is amended to read:

34052. For the purpose of providing disaster relief in communities subject to a natural disaster, the department shall award funds pursuant to Chapter 3.5 (commencing with Section 50530) of Part 2 of Division 31 if funds have been made available for this purpose. Notwithstanding

subdivision (b) of Section 50531, funds shall be used for housing for persons of low and moderate income, with first priority given to funding housing for persons of low income.

SEC. 2. Section 50400.5 of the Health and Safety Code is amended to read:

50400.5. Notwithstanding Section 13340 of the Government Code, or any other provision of law, any money contained in the Rural Predevelopment Loan Fund created pursuant to Section 50516, the Predevelopment Loan Fund created pursuant to Section 50531, the Housing Rehabilitation Loan Fund created pursuant to Section 50661, the Homeownership Assistance Fund created pursuant to Section 50778, and the Rental Housing Construction Fund created pursuant to Section 50740, is hereby continuously appropriated, without regard to fiscal year, for any purposes authorized by statute. It is the intent of the Legislature that this section also supersede the amounts appropriated pursuant to Items 2240-101-635, 2240-101-929, 2240-101-936, 2240-101-938, and 2240-101-980, respectively, of the Budget Act of 1984 (Ch. 258, Stats. 1984).

SEC. 2.5. Section 50502.5 of the Health and Safety Code is repealed.

SEC. 3. Chapter 3.1 (commencing with Section 50515) of Part 2 of Division 31 of the Health and Safety Code is repealed.

SEC. 4. The heading of Chapter 3.5 (commencing with Section 50530) of Part 2 of Division 31 of the Health and Safety Code is amended to read:

CHAPTER 3.5. PREDEVELOPMENT LOANS

SEC. 5. Section 50530 of the Health and Safety Code is amended and renumbered to read:

50530.5. As used in this chapter:

(a) ''Housing'' includes, but is not limited to, manufactured housing.

(b) ''Predevelopment loan'' means a loan for required expenses, other than administrative and construction, which are incurred by eligible sponsors in the process of, and prior to, securing long-term financing for construction, conversion, preservation, or rehabilitation of assisted housing, and which are recoverable once long-term financing is obtained. The purposes for which predevelopment loans may be made include, but are not limited to, the costs of, or the costs associated with, land purchase or options to buy land; options or deposits to buy or preserve existing government-assisted rental housing for the purpose of preserving the affordability of the units; professional services such as architectural, engineering, or legal services; permit or application fees; and bonding, site preparation, related water or sewer development, or

material expenses. In addition, the loans may be made for the purpose of extending the time for exercising an option or extending the time period for repayment of an advance previously obtained. These loan funds may be deposited in banks as compensating balances to establish lines of credit for participating nonprofit corporations.

(c) ''Fund'' means the Predevelopment Loan Fund which is replenished continuously by repayments of principal on loans made from the fund.

(d) ''Land purchase loan'' means a loan for the costs incurred by an eligible sponsor in obtaining an option on, or purchasing suitable land for, the future development of assisted housing, including, but not limited to, costs associated with transfer of title, appraisals, payment of property taxes, surveys, and necessary maintenance of the land.

(e) ''Eligible sponsors'' means local governmental agencies, nonprofit corporations, including cooperative housing corporations, and limited liability corporations or limited partnerships where all of the general partners are nonprofit mutual or public benefit corporations.

SEC. 6. Section 50530 is added to the Health and Safety Code, to read:

50530. (a) Large numbers of Californians face excessive housing costs and live in overcrowded or substandard housing units. In order to facilitate an increase in the supply of housing, the state has created and funded several predevelopment loan programs, the purposes of which have been to provide interim financing to housing sponsors to cover the planning and development costs associated with the development of new housing.

(b) A more efficient method to address the need to provide interim financing would be through the operation of a single omnibus predevelopment loan program.

(c) It is the intent of the Legislature that the Predevelopment Loan Program as contained in this chapter be used as the vehicle for the department's ongoing urban and rural predevelopment programs as well as specially directed programs as may be funded by the Legislature from time to time. In particular, the Predevelopment Loan Program, as amended, is intended to take the place of the following department programs:

(1) The Rural Predevelopment Loan Program previously established by Chapter 3.1 (commencing with Section 50515).

(2) The preservation predevelopment loans authorized by and subject to Item 2240-101-0001 of the Budget Act of 1999, Item 2240-106-0001 of the Budget Act of 2000, and Item 2240-106-0001 of the Budget Act of 2001.

(3) The jobs-housing predevelopment loans provided for in Chapter 3.7 (commencing with Section 50540).

SEC. 7. Section 50531 of the Health and Safety Code is amended to read:

50531. (a) The Urban Predevelopment Loan Fund is hereby renamed the Predevelopment Loan Fund.

(b) Notwithstanding Section 13340 of the Government Code, all money in the fund, including any interest on loans made from the fund, is hereby continuously appropriated to the department for carrying out the purposes of this chapter, together with interest as provided in that section. The fund shall be a revolving loan fund that shall be used to make predevelopment loans and land purchase loans to eligible sponsors for assisted housing for occupancy primarily by persons of low income.

(c) All interest, dividends, and pecuniary gains from investments or deposits of moneys in the fund shall accrue to the fund, notwithstanding Section 16305.7 of the Government Code. There shall be paid into the fund all of the following:

(1) Any moneys appropriated and made available by the Legislature for the purposes of the fund.

(2) Any moneys that the department receives in repayment of loans made from the fund, including any interest on loans made from the fund.

(3) Any other moneys that may be made available to the department for the purposes of this chapter from any other source.

(d) Notwithstanding any other provision of law, on the effective date of this subdivision, or as otherwise specified in this section, the following fund balances, as well as any subsequent income derived from loans, including principal and interest, or grants made for the programs identified below, shall be transferred from the funds in which they are currently deposited into the Predevelopment Loan Fund:

(1) Any funds remaining in the Rural Predevelopment Loan Fund established by Section 50516 and any repayments of these funds.

(2) Any unencumbered funds remaining for the preservation predevelopment loans authorized by and subject to Item 2240-101-0001 of the Budget Act of 1999 and Item 2240-106-0001 of the Budget Act of 2000 and deposited in the Rental Housing Construction Fund established by Section 50740 and any repayments of these loaned funds.

(3) All funds appropriated by and subject to Item 2240-106-0001 of the Budget Act of 2001.

(4) Any unencumbered funds remaining and any income and repayments from these loaned funds made for the jobs-housing predevelopment loans authorized by Item 2240-114-0001 of the Budget Act of 2000 to the extent that those funds remain unencumbered in the Rental Housing Construction Fund established by Section 50740.

(5) Any unencumbered funds, or any loan repayments, of the former Urban Predevelopment Loan Program that may have been received on

or after June 30, 1999, and transferred or deposited into the Rental Housing Construction Fund established by Section 50740.

SEC. 8. Section 50532 of the Health and Safety Code is amended to read:

50532. The fund shall be administered by the director and any persons within the department designated by the director, in accordance with all of the following requirements:

(a) The department shall not commit more than 20 percent of the total moneys appropriated to the fund to any single borrower at any point in time.

(b) The department shall require adequate security for all loans made from the fund. For the purposes of this subdivision, ''adequate security'' includes, but need not be limited to, a security interest in any property purchased with fund moneys, a promissory note, or an assignment of a land option, except that in the case of Indian trust land a mortgage on a leasehold interest in the property shall be acceptable.

(c) No predevelopment loan may be made pursuant to this chapter unless the department may reasonably anticipate that a commitment can be obtained by an eligible sponsor for construction financing or long-term financing that will permit occupancy primarily by persons of low income, as specified in subdivision (b) of Section 50531. The department may make land purchase loans to eligible sponsors to enable those sponsors to exercise options or to purchase land on which no option can be obtained even though the sponsor is not able at the time the loan is made to proceed with the development of assisted housing on the purchased site. If the eligible sponsor is unable to proceed with the development of assisted housing on the purchased site within three years of its acquisition, the sponsor, upon demand of the department, shall convey the site to the department. The department shall dispose of the site in accordance with subdivision (o) of Section 50406, and the net proceeds shall be paid into the fund.

(d) The department may establish alternate project selection processes, threshold requirements, and priorities for funds appropriated for special purposes. These alternate processes, requirements, and priorities shall be tied to the specific needs and objectives for which the funds have been appropriated.

(e) The department shall, from time to time, direct the Treasurer to invest moneys of the fund which are not required for its current needs in eligible securities which the department designates from among those specified in Section 16430 of the Government Code. The department may direct the Treasurer to deposit moneys from the fund in interest-bearing accounts in state or national banks or other financial institutions having principal offices in this state. The department may alternatively require the transfer of moneys in the fund to the Surplus

Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest, dividends, and pecuniary gains from those investments or deposits shall accrue to the fund.

(f) In complying with Section 50408, the department shall also report annually to the Legislature and the Governor on the administration of the fund. The report shall include, but need not be limited to, all of the following information:

(1) The number of units assisted.

(2) The average income of households assisted and the distribution of annual incomes among assisted households.

(3) The rents in assisted units.

(4) The number and amount of loans made to each eligible sponsor in the preceding year.

(5) Data on the number of delinquencies and defaults.

(6) Recommendations, as needed, to improve the operation of the fund.

(7) The number of loans made at interest rates lower than 7 percent per annum, and the income of households assisted by those loans.

(8) The public transportation services conveniently available to assisted households.

(9) The number of manufactured housing units assisted under Section 50531 and this section.

(10) The location, size, and cost of land, and option rights purchased with land purchase loans.

(g) (1) Except as provided in paragraph (2), the balance of any loan made from the fund or its predecessor fund which remains unpaid on September 22, 1983, except any portion which is delinquent, and all loans made from the fund on or after that date, shall bear interest at a rate of 3 percent per annum.

(2) The department may reduce or eliminate interest on the loans, if, in the exercise of sound discretion, the department determines that action is necessary for the provision of decent housing to very low income households, as described in Section 50105. However, if the department eliminates interest on a loan, it shall charge a loan origination fee not to exceed 2 percent of the loan amount.

(h) To the extent feasible, the department shall ensure a reasonable geographic distribution of the funds. Other things being equal, the department shall give priority to assisting development that meets either of the following requirements:

(1) It will be located in public transit corridors.

(2) It will be used for the preservation and acquisition of existing government-assisted rental housing at risk of conversion to market-rate

use. Within this category, the department shall give priority to those applications that include matching financing from local redevelopment agencies or federal programs.

(i) The department may make predevelopment loans or land purchase loans for the development of mobilehome parks and manufactured housing subdivisions.

SEC. 9. Section 50532.5 of the Health and Safety Code is repealed.

SEC. 10. Section 50545 of the Health and Safety Code is amended to read:

50545. Five million dollars ($5,000,000) of the funds appropriated for the purposes of this chapter in Item 2240-114-0001 of the Budget Act of 2000 shall be transferred to the Rental Housing Construction Fund created pursuant to Section 50740 to be used for predevelopment loans pursuant to Chapter 3.5 (commencing with Section 50530), subject to the following provisions:

(a) All projects shall be located within one-half mile of an existing or planned transit station proposed for development. For these purposes, a transit station is a site where two or more mass transit modes, or one transit mode with three or more mass transit lines, are accessible to the public.

(b) Notwithstanding any other provision of law, the department may establish interest rates between 3 and 7 percent based on the department's analysis of project need.

(c) In addition to the activities eligible under the Predevelopment Loan Program, funds awarded pursuant to this section may be used for master environmental impact reports or other environmental documents that would access potential impacts in advance and propose measures to mitigate negative impacts.

(d) Awards made pursuant to this section shall require a 50 percent match from the local agency in which the site is located.

(e) In addition to those eligible sponsors specified in subdivision (e) of Section 50530.5, eligible sponsors shall include limited liability corporations and limited partnerships where all managing members or general partners are nonprofit organizations.

SEC. 11. Section 50740 of the Health and Safety Code is amended to read:

50740. (a) The Rental Housing Construction Incentive Fund established in the State Treasury is hereby renamed the Rental Housing Construction Fund. Notwithstanding Section 13340 of the Government Code, all money in the fund is hereby continuously appropriated to the Department of Housing and Community Development, and, except as provided in subdivisions (b) and (c), shall be utilized for purposes of this chapter, Section 50775.5, and Chapter 15 (commencing with Section 50880). All interest or other increment resulting from investment or

deposit of moneys in the fund shall be deposited in the fund, notwithstanding Section 16305.7 of the Government Code. Moneys in the fund shall not be subject to transfer to any other fund pursuant to Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, except the Surplus Money Investment Fund.

(b) An amount not to exceed four million dollars ($4,000,000) of the moneys from the fund utilized by the agency for development costs which is repaid to the agency or disencumbered on or after July 1, 1983, shall be deposited in a separate account and utilized and apportioned in accordance with the following percentages as it becomes available:

(1) Fifty percent of the moneys shall be transferred by the agency to the department and deposited in the Housing Rehabilitation Loan Fund, established pursuant to Section 50661, and utilized for making deferred payment loans for residential hotels as authorized by subdivision (b) of Section 50661 and for purposes of subdivision (c) of that section.

(2) Twenty-five percent of the moneys shall be transferred by the agency to the department for deposit in the Emergency Housing and Assistance Fund, established pursuant to Section 50800.

(3) Twenty-five percent of the moneys shall be transferred by the agency to the department for deposit in the annuity fund, established pursuant to Section 50738.5.

(c) Notwithstanding any other provision of law, effective with the date of the act adding this subdivision, appropriations authorized for support of the department from the Family Housing Demonstration Account shall instead be authorized for expenditure from the Rental Housing Construction Fund.

SEC. 12. Section 50740.1 of the Health and Safety Code is repealed.

SEC. 13. Section 50748.1 of the Health and Safety Code is amended to read:

50748.1. (a) The department shall from time to time direct the Treasurer to invest moneys set aside or otherwise deposited in the annuity fund established by Section 50748 as an account in the Rental Housing Construction Fund, which are not required for its current needs, in the eligible securities specified in Section 16430 of the Government Code that are designated by the department. The department may direct the Treasurer to deposit moneys in interest-bearing accounts in state or national banks or other financial institutions having principal offices in this state, or in other investments which are consistent with state policy and achieve returns adequate to fulfill the requirements of this chapter. The department may alternatively require the transfer of moneys in the annuity fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

All interest or other increment resulting from the investment or deposit shall be deposited in the annuity fund account, notwithstanding Section 16305.7 of the Government Code. Moneys in the fund are not subject to transfer to any other fund pursuant to Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, except the Surplus Money Investment Fund.

(b) Upon request of the department, the Controller shall transfer from the annuity fund account in the Rental Housing Construction Fund, an aggregate amount not exceeding five million dollars ($5,000,000) to the Predevelopment Loan Fund. The department shall determine the respective amount to be deposited in these funds.

Transfers made pursuant to this subdivision shall be treated as advances and shall be repaid, with interest specified in this subdivision, within three years of the effective date of transfer of the moneys, except that the department may defer repayment if (1) the balance of moneys in the annuity fund account is sufficient to meet current or anticipated financial obligations and (2) the financial integrity of any component or fund of the Rental Housing Construction Program is not at risk. Moneys advanced pursuant to this subdivision shall be repaid with interest at the rate of 7 percent.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to facilitate an increase in the state's critically short supply of housing as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 396

An act to amend Sections 53091 and 53094 of, and to add Section 65352.2 to, the Government Code, relating to land use.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 53091 of the Government Code is amended to read:

53091. (a) Each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated.

(b) On projects for which state school building aid is requested by a local agency for construction of school facilities, the county or city planning commission in which said agency is located shall consider in its review for approval information relating to attendance area enrollment, adequacy of the site upon which the construction is proposed, safety features of the site and proposed construction, and present and future land utilization, and report thereon to the State Allocation Board. If the local agency is situated in more than one city or county or partly in a city and partly in a county, the local agency shall comply with the ordinances of each county or city with respect to the territory of the local agency which is situated in the particular county or city, and the ordinances of a county or city shall not be applied to any portion of the territory of the local agency which is situated outside the boundaries of the county or city. Notwithstanding the preceding provisions of this section, this section does not require a school district or the state when acting under the State Contract Act (Article 1 (commencing with Section 10100) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code) to comply with the building ordinances of a county or city.

(c) Each local agency required to comply with building ordinances and zoning ordinances pursuant to this section and each school district whose school buildings are inspected by a county or city pursuant to Section 53092 shall be subject to the provisions of the applicable ordinances of a county or city requiring the payment of fees, but the amount of those fees charged to a local agency or school district shall not exceed the amount charged under the ordinance to nongovernmental agencies for the same services or permits. Building ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, or transmission of water, wastewater, or electrical energy by a local agency.

(d) Zoning ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, or transmission of water, or for the production or generation of electrical energy, nor to facilities that are subject to Section 12808.5 of the Public Utilities Code, nor to electrical substations in an electrical transmission system that receives electricity at less than 100,000 volts. Zoning ordinances of a county or city shall apply to the location or construction of facilities for the storage or transmission of electrical energy by a local agency, if the zoning ordinances make provision for those facilities.

SEC. 2. Section 53094 of the Government Code is amended to read:

53094. (a) Notwithstanding any other provision of this article, this article does not require a school district to comply with the zoning ordinances of a county or city unless the zoning ordinance makes

provision for the location of public schools and unless the city or county has adopted a general plan.

(b) Notwithstanding subdivision (a), the governing board of a school district, that has complied with the requirements of Section 65352.2 of this code and Section 21151.2 of the Public Resources Code, by a vote of two-thirds of its members, may render a city or county zoning ordinance inapplicable to a proposed use of property by the school district. The governing board of the school district may not take this action when the proposed use of the property by the school district is for nonclassroom facilities, including, but not limited to, warehouses, administrative buildings, and automotive storage and repair buildings.

(c) The governing board of the school district shall, within 10 days, notify the city or county concerned of any action taken pursuant to subdivision (b). If the governing board has taken such an action, the city or county may commence an action in the superior court of the county whose zoning ordinance is involved or in which is situated the city whose zoning ordinance is involved, seeking a review of the action of the governing board of the school district to determine whether it was arbitrary and capricious. The city or county shall cause a copy of the complaint to be served on the board. If the court determines that the action was arbitrary and capricious, it shall declare it to be of no force and effect, and the zoning ordinance in question shall be applicable to the use of the property by the school district.

SEC. 3. Section 65352.2 is added to the Government Code, to read:

65352.2. (a) It is the intent of the Legislature in enacting this section to foster improved communication and coordination between cities, counties, and school districts related to planning for school siting.

(b) Following notification by a local planning agency pursuant to paragraph (2) of subdivision (a) of Section 65352, the governing board of any elementary, high school, or unified school district, in addition to any comments submitted, may request a meeting with the planning agency to discuss possible methods of coordinating planning, design, and construction of new school facilities and school sites in coordination with the existing or planned infrastructure, general plan, and zoning designations of the city and county in accordance with subdivision (d). If a meeting is requested, the planning agency shall meet with the school district within 15 days following notification.

(c) At least 45 days prior to completion of a school facility needs analysis pursuant to Section 65995.6 of the Education Code, a master plan pursuant to Sections 16011 and 16322 of the Education Code, or other long range plan, that relates to the potential expansion of existing school sites or the necessity to acquire additional school sites, the governing board of any school district shall notify and provide copies of any relevant and available information, master plan, or other long range

plan, including, if available, any proposed school facility needs analysis, that relates to the potential expansion of existing school sites or the necessity to acquire additional school sites, to the planning commission or agency of the city or county with land use jurisdiction within the school district. Following notification, or at any other time, the affected city or county may request a meeting in accordance with subdivision (d). If a meeting is requested, the school district shall meet with the city or county within 15 days following notification. After providing the information specified in this section within the 45-day time period specified in this subdivision, the governing board of the affected school district may complete the affected school facility needs analysis, master plan, or other long-range plan without further delay.

(d) At any meeting requested pursuant to subdivision (b) or (c) the parties may review and consider, but are not limited to, the following issues:

(1) Methods of coordinating planning, design, and construction of new school facilities and school sites in coordination with the existing or planned infrastructure, general plan, and zoning designations of the city and county.

(2) Options for the siting of new schools and whether or not the local city or counties existing land use element appropriately reflects the demand for public school facilities, and ensures that new planned development reserves location for public schools in the most appropriate locations.

(3) Methods of maximizing the safety of persons traveling to and from school sites.

(4) Opportunities to coordinate the potential siting of new schools in coordination with existing or proposed community revitalization efforts by the city or county.

(5) Opportunities for financial assistance which the local government may make available to assist the school district with site acquisition, planning, or preparation costs.

(6) Review all possible methods of coordinating planning, design, and construction of new school facilities and school sites or major additions to existing school facilities and recreation and park facilities and programs in the community.

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.

CHAPTER 397

An act to amend Sections 15080, 76227, 76229, 76230, 76233, 76293, 76294, 76341, 76342, 76343, 76361, and 76363 of, and to add Sections 15072.5 and 76293.5 to, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 15072.5 is added to the Food and Agricultural Code, to read:

15072.5. It is unlawful for any person to use any commercial feed containing drugs or food additives except in compliance with all directions for use stated on any tag or label affixed to or accompanying the commercial feed.

SEC. 2. Section 15080 of the Food and Agricultural Code is amended to read:

15080. The manufacturer or guarantor of a seized or held lot found to be in violation may appeal the result of analysis to the secretary in writing within 10 days of receiving the notice of violation. Upon receipt of the appeal, the secretary shall perform an additional analysis of the official sample representing the lot in question. The cost of analysis shall be at the expense of the person that requests the appeal. The findings from the appeal analysis are final.

SEC. 3. Section 76227 of the Food and Agricultural Code is amended to read:

76227. ''Handler'' means any person engaged in the marketing of wool which he or she has produced or purchased or acquired from a producer, or is marketing on behalf of a producer whether as owner, agent, employee, broker or otherwise. A producer who markets wool to an out-of-state handler shall be considered the handler for purposes of this chapter.

SEC. 4. Section 76229 of the Food and Agricultural Code is amended to read:

76229. ''Marketing year'' or ''fiscal year'' means the period beginning April 1 of any year and ending March 31 of the following year.

SEC. 5. Section 76230 of the Food and Agricultural Code is amended to read:

76230. ''Producer'' means any person in this state who raises, breeds, grows, or feeds sheep, and markets, or causes to be marketed, the wool derived therefrom and who, upon request, provides proof of commodity marketing during the preceding marketing year. ''Producer'' does not include any person who markets 100 pounds or less of wool in the preceding marketing year.

SEC. 6. Section 76233 of the Food and Agricultural Code is amended to read:

76233. (a) ''Wool'' means the shorn fiber of live sheep in the grease basis, including offsort wool or offsorts in the natural state before cleaning or scouring.

(b) For the purposes of this chapter, the following terms have the following meanings:

(1) ''Offsort wool or offsorts'' means tags, bellies, or crutchings.

(2) ''Tags'' means wool which has become discolored from urine or feces, dung locks, or floor sweepings.

(3) ''Bellies'' means wool which has been shorn from the belly of the sheep.

(4) ''Crutchings'' means wool which has been shorn from the crotch area of a sheep.

SEC. 7. Section 76293 of the Food and Agricultural Code is amended to read:

76293. The commission may conduct, and contract with others to conduct, research, including the study, analysis, dissemination, and accumulation of information obtained from the research or elsewhere, regarding this chapter. The results of any research conducted by or on behalf of the commission may be used by the commission in any way it deems appropriate, and notwithstanding any other provision of law, may be maintained in confidence by the commission and not disseminated to any person not subject to this chapter.

SEC. 8. Section 76293.5 is added to the Food and Agricultural Code, to read:

76293.5. The commission may accept contributions of, or match private, state, or federal funds, and employ or make contributions of funds to other persons or state or federal agencies for purposes of promoting, enhancing, and maintaining sheep industry.

SEC. 9. Section 76294 of the Food and Agricultural Code is amended to read:

76294. The commission may collect information, including, but not limited to, industry statistics, and may publish and distribute, without charge, a bulletin or other communication for dissemination of information to producers and handlers.

SEC. 10. Section 76341 of the Food and Agricultural Code is amended to read:

76341. (a) The commission shall, not later than March 31 of each year, or as soon thereafter as possible, establish the assessment for the following marketing year.

(b) The assessment for the first marketing year shall be six cents ($0.06) per pound on all wool marketed by producers.

(c) For the second and subsequent marketing years, the assessment shall not exceed eight cents ($0.08) per pound on all wool marketed by producers, as determined by the commission, unless a greater fee is approved by producers pursuant to the procedures specified in Section 76381.

(d) The commission may establish an assessment rate that is different for offsort wool or offsorts than for other wool, provided that the rate does not exceed the maximum assessment authorized in subdivision (c).

(e) The assessment rate for wool, other than offsort wool, shall not be increased by more than one-half of one cent ($0.005) each marketing year.

(f) A fee greater than twelve cents ($0.12) per pound may not be charged unless that fee is approved by the Legislature by statute.

(g) Assessments provided for in this section shall be upon the producer. The handler shall deduct the assessment from amounts paid by him or her to the producer and shall be a trustee of those funds until they are paid to the commission at the time and in the manner prescribed by the commission.

SEC. 11. Section 76342 of the Food and Agricultural Code is amended to read:

76342. Every handler shall keep a complete and accurate record of all wool handled with the name of the producer whose wool was handled. When the wool handled was acquired from a person who is not a producer, the handler shall determine from that person the name of the producer for the purposes of the records required by this section. The records shall be in simple form and contain information as the commission shall prescribe. The records shall be preserved by the handler for a period of five years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

SEC. 12. Section 76343 of the Food and Agricultural Code is amended to read:

76343. All proprietary information obtained by the commission or the director from producers or handlers or any other source, and all lists of producers in the possession of the commission or the director are confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding regarding this chapter.

Information on volume shipments, commodity value, and other related information which is required for reports to governmental agencies, financial reports made to the commission or aggregate sales and inventory information, and any other information which the handlers request from the commission to receive in total, excluding individual handler information, may be disclosed by the commission.

SEC. 13. Section 76361 of the Food and Agricultural Code is amended to read:

76361. It is unlawful for any person to do any of the following:

(a) Fail or refuse to render or furnish a report, statement, or record required by the commission.

(b) Willfully render or furnish a false report, statement, or record required by the commission.

(c) When engaged in the handling of wool, to fail or refuse to furnish the commission or its duly authorized agents, information concerning the name and address of the producers or other persons from whom wool has been received and the quantity so received.

(d) Secrete, destroy, or alter records required to be kept under this chapter.

SEC. 14. Section 76363 of the Food and Agricultural Code is amended to read:

76363. The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties, and for the obtaining of injunctive relief or specific performance, regarding this chapter and the rules and regulations adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any other rule or regulation of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

A writ of attachment shall be issued pursuant to Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the showing of irreparable harm or inadequate remedy at law specified in Section 526 and 527 of the Code of Civil Procedure is not required.

Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business regarding the commodity subject to this chapter until there is full compliance and satisfaction of the judgment. Upon a

favorable judgment for the commission, it shall be entitled to receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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.

CHAPTER 398

An act to amend Sections 704, 2922, 2923, and 12002.5 of, to add Chapter 1.5 (commencing with Section 716) to Division 2 of, and to repeal Section 221 of, the Fish and Game Code, to amend Section 10005 of the Public Resources Code, and to amend Section 3 of Chapter 223 of the Statutes of 2000, relating to fish and game, and making an appropriation therefor.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 221 of the Fish and Game Code is repealed.

SEC. 1.5. Section 704 of the Fish and Game Code is amended to read:

704. (a) Notwithstanding any other provision of law, the director is the appointing power of all employees within the department, and all employees in the department are responsible to the director for the proper carrying out of the duties and responsibilities of their respective positions.

(b) The changes made to subdivision (a) during the 2001–02 Regular Session of the Legislature are declaratory of existing law.

SEC. 2. The Legislature finds and declares all of the following:

(a) Wildlife resources are managed in trust by the different states for the benefit of all residents and visitors.

(b) The protection of the wildlife resources of a state is materially affected by the degree of compliance with statutes, ordinances, and administrative rules and regulations relating to the management of those resources.

(c) The preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of those natural resources.

(d) Wildlife resources are valuable without regard to political boundaries; therefore, every person should comply with wildlife preservation, protection, management, and restoration statutes, ordinances, and administrative rules and regulations of the participating states as a condition precedent to the continuance or issuance of any license to hunt, fish, or trap.

(e) Violations of wildlife laws interfere with the management of wildlife resources and may endanger the safety of persons and property.

(f) The mobility of wildlife law violators necessitates the maintenance of channels of communication among various states.

(g) In most instances, a person who is cited for a wildlife violation in a state other than his or her state of residence is subjected to either of the following:

(1) Is required to post collateral or a bond to secure appearance for a trial at a later date, or is taken into custody until the collateral or bond is posted.

(2) Is taken directly to court for an immediate appearance.

(h) The purpose of the wildlife law enforcement practices is to ensure compliance with the terms of a wildlife citation by the cited person who, if released after receiving a citation, could return to his or her home state and disregard his or her duty under the terms of the citation.

(i) In most instances, a person who is issued a wildlife citation in his or her home state is permitted to accept the citation from the officer at the scene of the violation, and is not detained or held in custody if he or she agrees to comply with the terms of the citation.

(j) The law enforcement practices described in subdivision (g) cause unnecessary inconvenience and, at times, hardship for a person who is unable at the time to post collateral, furnish a bond, stand trial, or pay a fine, and who is thus compelled to remain in custody until some alternative arrangement is made. Those practices consume an excessive amount of law enforcement agencies' time.

SEC. 3. Chapter 1.5 (commencing with Section 716) is added to Division 2 of the Fish and Game Code, to read:

CHAPTER 1.5. WILDLIFE VIOLATOR COMPACT

Article 1. General Provisions

716. The Wildlife Violator Compact is hereby enacted into law and entered into with all other participating states.

716.1. It is the policy of this state in entering into the compact to do all of the following:

(a) Promote compliance with the statutes, ordinances, and administrative rules and regulations relating to the management of wildlife resources in this state.

(b) Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a participating state and treat that suspension as if it had occurred in the licensee's home state if the violation that resulted in the suspension could have been the basis for suspension in the home state.

(c) Allow a violator, except as provided in subdivision (b) of Section 716.4, to accept a wildlife citation and, without delay or detention, proceed on his or her way whether or not the violator is a resident of the state in which the citation was issued, if the violator's home state is a party to this compact.

(d) Report to the appropriate participating states, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(e) Allow the home state to recognize and treat convictions recorded against its residents, if those convictions occurred in a participating state, as though they had occurred in the home state.

(f) Extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one participating state to a resident of another participating state.

(g) Maximize effective use of law enforcement personnel and information.

(h) Assist court systems in the efficient disposition of wildlife violations.

716.2. The purposes of this chapter include both of the following:

(a) To provide a means by which participating states may join in a reciprocal program to effectuate the policies enumerated in Section 716.1 in a uniform and orderly manner.

(b) To provide for the fair and impartial treatment of wildlife violators operating within participating states in recognition of the violator's right to due process and the sovereign status of the participating states.

Article 2. Definitions

716.3. For purposes of this chapter, the following terms have the following meanings:

(a) ''Board'' means the board of compact administrators established pursuant to Section 716.8.

(b) ''Citation'' means any summons, complaint, ticket, penalty assessment, or other official document issued to a person by a wildlife officer or other peace officer for a wildlife violation pertaining to sport fishing, hunting, or trapping, which contains an order requiring the person to respond.

(c) ''Collateral'' means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(d) ''Compact manual'' is a manual used and adopted by the participating states that prescribes the procedures to be followed in administering the wildlife violator compact in participating states.

(e) ''Compliance,'' with respect to a citation, means the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, penalties, costs, and surcharges, if any.

(f) ''Conviction'' means a conviction, including, but not limited to, any court conviction for an offense related to sport fishing, hunting, or trapping, that is prohibited by statute, ordinance, or administrative rule or regulation, that involves the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere, and the imposition of a deferred or suspended sentence by the court.

(g) ''Court'' means a court of law, including magistrate's court and the justice of the peace court.

(h) ''Home state'' means the state of primary residence of a person.

(i) ''Issuing state'' means the participating state that issues a wildlife citation to the violator.

(j) ''License'' means any license, permit, entitlement to use, or other public document that conveys to the person to whom it is issued the privilege of sport fishing, hunting, or trapping, that is regulated by statute, ordinance, or administrative rule or regulation of a participating state.

(k) ''Licensing authority,'' with reference to this state, means the Department of Fish and Game, which is the state agency authorized by law to issue or approve licenses or permits to sport fish, hunt, or trap.

(*l*) ''Participating state'' means any state that enacts legislation to become a member of the wildlife compact.

(m) ''Personal recognizance'' means an agreement by a person made at the time of issuance of the wildlife citation that the person will comply with the terms of the citation.

(n) ''State'' means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Provinces of Canada, and other countries.

(o) ''Suspension'' means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license for sport fishing, hunting, or trapping.

(p) ''Terms of the citation'' means those conditions and options expressly stated upon a citation.

(q) ''Wildlife'' means all species of animals including, but not limited to, mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as ''wildlife'' and are protected or otherwise regulated by statute, ordinance, or administrative rule or regulation in a participating state. The species included in the definition of ''wildlife'' vary from state to state and the determination of whether a species is ''wildlife'' for the purposes of this compact shall be based on the law of the participating state.

(r) ''Wildlife law'' means any statute, regulation, ordinance, or administrative rule or regulation developed and enacted for the management of wildlife resources and the uses thereof.

(s) ''Wildlife officer'' means any individual authorized in this state to issue a citation for a wildlife violation.

(t) ''Wildlife violation'' means the violation of a statute, ordinance, or administrative rule or regulation developed and enacted for the management of wildlife resources and the uses thereof pertaining to sport fishing, hunting, and trapping and for which a prosecution is initiated.

Article 3. Issuing State Violation Procedures

716.4. (a) Notwithstanding any other provision of law, when issuing a citation for a wildlife violation for purposes of this chapter, a wildlife officer of the issuing state may issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state, and shall not require that person to post collateral to secure appearance, except as provided in subdivision (b), if the officer receives the personal recognizance of the person that he or she will comply with the terms of the citation.

(b) Personal recognizance is acceptable unless prohibited by ordinance of a city or county, the policy of the issuing agency, a

procedure or regulation, or by the compact manual, and only if the violator provides adequate proof of identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate wildlife officer shall report the conviction or failure to comply to the licensing authority of the participating state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state, and shall contain information as prescribed in the compact manual.

(d) Upon receipt of the report of conviction or noncompliance pursuant to subdivision (c), the licensing authority of the issuing state shall transmit to the licensing authority of the home state of the violator the information in the form and content prescribed in the compact manual.

Article 4. Home State Procedures

716.5. (a) Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing authority shall notify the violator and shall initiate a suspension action. The licensing authority shall suspend the violator's license privileges, in accordance with the requirements of due process, until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished to the licensing authority.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state may enter that conviction in its records and may treat the conviction as though it occurred in the home state for the purposes of the suspension of license privileges, if the violation that resulted in the conviction would constitute a wildlife violation in the home state.

(c) The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states as provided in the compact manual.

Article 5. Reciprocal Recognition of Suspension

716.6. (a) As a participating member of the wildlife violator compact, the licensing authority of this state may recognize the suspension of license privileges of any person by any participating state if both of the following occur:

(1) The violation that resulted in the conviction would constitute a wildlife violation in this state.

(2) The conviction that resulted in the suspension could have been the basis for suspension under the statutes, ordinances, or administrative rules or regulations of this state.

(b) The licensing authority shall communicate suspension information to other participating states in the form and content prescribed by the compact manual.

Article 6. Applicability of Other Laws

716.7. Except as expressly required by this chapter, this chapter shall not be construed to affect the right of any participating state to apply any of its statutes, ordinances, or administrative rules or regulations relating to license privileges to any person or circumstance, or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state, concerning wildlife law enforcement.

Article 7. Compact Administrator Procedures

716.8. (a) (1) A board of compact administrators is hereby established to serve as a governing body for the resolution of all matters relating to the operation of this compact. The board shall be composed of one member from each of the participating states to be known as the compact administrator.

(2) A compact administrator of any participating state may provide for the discharge of his or her duties and the performance of his or her functions as a board member by an alternate, designated by that member. An alternate is not entitled to serve unless written notification of his or her identity is provided to the board.

(3) The compact administrator for this state shall be appointed by the director and shall serve, and be subject to removal, in accordance with the laws of this state.

(b) Each member of the board is entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the membership of the board vote in favor thereof. Action by the board may only be taken at a meeting at which a majority of the membership of the board is present.

(c) The board shall elect annually from its membership a chairperson and vice chairperson.

(d) The board shall adopt bylaws, not inconsistent with this compact, and may amend and rescind the bylaws.

(e) The board may accept for any of its purposes and functions under this compact any donation and grant of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any governmental agency, and may receive, utilize, and dispose thereof.

(f) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, individual, firm, or corporation, including any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering this compact. All procedures and forms adopted pursuant to board action shall be contained in a compact manual.

Article 8. Entry Into Compact and Withdrawal

716.9. (a) This chapter shall become effective at such time as it is adopted in substantially similar form by this state and one or more other states, subject to the following conditions:

(1) The entry into the compact shall be made by resolution executed and ratified by authorized officials of the applying state and submitted to the chairperson of the board of contract administrators.

(2) The resolution shall substantially be in the form and content as provided in the compact manual, and shall include all of the following:

(A) A citation of the authority authorizing the state to become a party to this compact.

(B) An agreement to comply with the terms and provisions of this compact.

(C) An agreement that the state entering into the compact agrees to participate with all participating states in the compact.

(b) The effective date of entry into the compact shall be specified by the applying state but shall not be less than 60 days after notice has been given by either the chairperson or secretary of the board to each participating state that the resolution from the applying state has been received.

(c) A participating state may withdraw from participation in this compact by giving written notice to the compact administrator of each participating state. The withdrawal shall not become effective until 90 days from the date on which the written notice of withdrawal is sent to each participating state. The withdrawal of any state shall not affect the validity of this compact as to the remaining participating states.

Article 9. Amendments to the Compact

717. (a) This compact may be amended periodically. Amendments shall be presented in resolution form to the chairperson of the board, and shall be initiated by one or more participating states.

(b) The adoption of an amendment requires endorsement by all participating states and becomes effective 30 days after the date of the last endorsement.

(c) The failure of any participating state to respond to the appropriate authority within 60 days after receipt of a proposed amendment constitutes endorsement thereof.

Article 10. Construction and Severability

717.1. This compact shall be liberally construed to effectuate its purposes.

717.2. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid or contrary to the constitution of any participating state or of the United States, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 4. Section 2922 of the Fish and Game Code is amended to read:

2922. The program is hereby established for the purpose of devising and evaluating methods by which wetland management techniques in the Suisun Marsh can be better integrated with mosquito abatement programs. The department shall award grant funds for the program to the conservation district until June 30, 2005. The program shall be implemented and administered in accordance with the following procedures:

(a) Not later than July 31, 2001, July 31, 2002, July 31, 2003, and July 31, 2004, the conservation district, the mosquito district, and the department shall confer for the purpose of selecting those lands on which the early flooding program may be conducted with the voluntary consent of the landowners, shall immediately notify the owners of those selected properties, and shall give the owners of those selected properties the option to participate in the program. Priority shall be given to those properties that have demonstrated, or for which it can be reasonably assumed, are the least likely to produce mosquitos at levels requiring extensive abatement efforts.

(b) The mosquito district shall keep detailed records of each mosquito outbreak requiring the application of control measures, including the date of the outbreak and any posttreatment inspections, the species of mosquitos involved, approximate acreage sustaining the outbreak, the kind of control measure or measures employed, the type of chemical controls applied, if any, the application rate, and the total cost of the abatement procedure.

(c) The mosquito district shall immediately notify the conservation district of any mosquito outbreaks requiring control measures, and provide the conservation district with the written record of those outbreaks together with any recommendations the mosquito district may have regarding wetland habitat management practices that could be

employed to avert or minimize future outbreaks on the subject property in a timely fashion.

(d) The conservation district shall conduct a weekly bird census of all waterfowl, shorebirds, and wading birds for the properties participating in the early flooding program, and shall maintain complete records of the census for each property. Prior to the initiation of the census effort, the conservation district and the department shall develop an appropriate census protocol. The census period shall extend from the time of initial flooding of any property until October 1 of each year.

(e) The conservation district shall submit to the department an annual report by March 1 of each year that summarizes the program-related events of the previous season's early flooding program. The report shall contain, at a minimum, for each property participating in the program all of the following:

(1) The name, identification number, date of initial flooding, and acreage flooded prior to October 1 of the year covered in the annual report.

(2) A summary of the results of the bird census, and any pertinent aerial waterfowl census data that may have been collected by the department.

(3) A detailed summary of all mosquito abatement events and the costs thereof.

The annual report prepared pursuant to this subdivision shall also include recommendations regarding how current marsh management practices or mosquito abatement operations can be improved to better integrate the two interests with the intent of enhancing wetland habitat, thereby reducing the cost of vector control measures and limiting the need for the application of chemical control agents.

(f) The conservation district shall submit a final report to the department by June 1, 2005, which summarizes the results of the entire demonstration program and shall include a summary of those matters described in paragraphs (1) to (3), inclusive, of subdivision (e). In addition, the final report shall emphasize and describe the benefits of the early flooding program, marsh management practices demonstrated to be effective at reducing the frequency or duration of major mosquito outbreaks, improved or modified mosquito control measures, and how any or all of the foregoing may be applied elsewhere in the state.

SEC. 5. Section 2923 of the Fish and Game Code is amended to read:

2923. This chapter shall remain in effect only until June 30, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before June 30, 2005, deletes or extends that date.

SEC. 6. Section 12002.5 of the Fish and Game Code is amended to read:

12002.5. (a) Notwithstanding Section 12002, a violation of Section 1764 is an infraction, not a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) and not more than five hundred dollars ($500). If a person convicted of a violation of Section 1764 is granted probation, the court shall impose as a condition of probation that the person pay at least the minimum fine prescribed in this subdivision.

(b) If a person is convicted of a violation of Section 1764 and produces in court a valid wildlife area pass, the court may reduce the fine imposed for the violation of Section 1764 to fifty dollars ($50).

SEC. 7. Section 10005 of the Public Resources Code is amended to read:

10005. (a) The Department of Fish and Game shall impose and collect a filing fee of eight hundred fifty dollars ($850) to defray the costs of identifying streams and providing studies pursuant to Division 10 (commencing with Section 10000) of the Public Resources Code.

(b) The filing fee shall be proportional to the cost incurred by the Department of Fish and Game and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the costs of the Department of Fish and Game as specified in subdivision (a).

(c) Any user of water, including a person or entity holding riparian or appropriative rights, shall pay the filing fee to the Department of Fish and Game upon application to the State Water Resources Control Board for any permit, transfer, extension, or change of point of diversion, place of use, or purpose of use, if there is a diversion of water from any waterway where fish reside. No permit, or other entitlement identified in this section is effective until the filing fee is paid. The State Water Resources Control Board shall, every six months, forward all fees collected to the department and provide the location for each entitlement for which a filing fee has been collected.

(d) The fee imposed by this section shall not be imposed on the following applications filed with the State Water Resources Control Board:

(1) Small domestic use registrations and livestock stockpond certificates submitted pursuant to Article 2.7 (commencing with Section 1228) of Chapter 2 of Division 2 of the Water Code.

(2) The first application for an extension of time for an individual permit if no change in point of diversion, place of use, or purpose of use is included in the application.

(3) Water applications which, in the opinion of the Department of Fish and Game, are filed for administrative and technical clarification purposes only.

(4) Water applications or petitions, the primary purpose of which is to benefit fish and wildlife resources. The determination of the benefit

to fish and wildlife shall be made, in writing, by the Department of Fish and Game in order to be exempt from the fee.

(e) If an applicant or petitioner files multiple applications or petitions for the same appropriation, transfer, extension, or change, and the State Water Resources Control Board reviews and considers the applications or petitions together, only one filing fee is required for those applications or petitions.

SEC. 8. Section 3 of Chapter 223 of the Statutes of 2000 is amended to read:

Sec. 3. (a) The sum of one hundred forty thousand dollars ($140,000) is hereby appropriated from the General Fund to the Department of Fish and Game for allocation to the Suisun Resource Conservation District for the purpose of implementing the Suisun Marsh Wetlands Enhancement and Mosquito Abatement Demonstration Program established pursuant to Chapter 12 (commencing with Section 2920) of Division 3 of the Fish and Game Code.

(b) The department shall allocate the sum of thirty-five thousand dollars ($35,000) to the conservation district in each of the 2001–02, 2002–03, 2003–04, and 2004–05 fiscal years, as follows:

(1) Up to twenty thousand dollars ($20,000) shall be expended by the conservation district each year for the following purposes:

(A) From July 1 until September 30 of each year, the conservation district shall pay 75 percent of the cost incurred by the mosquito district for any necessary mosquito abatement activities undertaken by the mosquito district on lands previously authorized to participate in the current year's early flooding program. The remaining 25 percent of those costs shall be borne by the owner or owners of the affected property, and they shall pay that amount to the conservation district within 30 days after receipt of an invoice for those costs from the conservation district. If the owner or owners do not pay the full 25 percent copayment amount within that 30-day period, the owner or owners shall pay the mosquito district the full 100 percent of the costs incurred by the mosquito district for mosquito abatement activities on the affected property, and the conservation district shall be relieved of the obligation to pay any portion of the cost of those activities on that property.

(B) After October 1 of each year, all private wetlands in the Suisun Marsh are eligible to receive program funds, to the extent available, to defray the costs of mosquito abatement incurred during the late flooding program. The mosquito district shall continue its policy in effect on January 1, 1999, of only charging one-half of the abatement costs it incurs during the late flooding program in the Suisun Marsh. The conservation district shall pay 75 percent of those costs and the owner or owners of the affected property shall pay the remaining 25 percent of those costs to the conservation district within 30 days after receipt of an

invoice for those costs from the conservation district. If the owner or owners do not pay the full 25 percent copayment amount within that 30-day period, the owner or owners shall pay the mosquito district the full 100 percent of the costs incurred by the mosquito district for mosquito abatement activities on the affected property, and the conservation district shall be relieved of the obligation to pay any portion of the cost of those activities on that property.

(C) Any funds not expended by December 31 of each year pursuant to subparagraphs (A) and (B) may be used by the conservation district for the purposes specified in paragraph (2).

(2) Not less than fifteen thousand dollars ($15,000) of the amount allocated each year shall be used for the purpose of reimbursing the conservation district for expenses it incurs implementing the program.

(c) The department may not allocate any funds from the General Fund for purposes of the program after June 30, 2005.

(d) All payments made to the conservation district shall be in arrears. The conservation district shall submit invoices to the Department of Fish and Game for reimbursement of its program related costs quarterly. Each invoice shall be accompanied by an itemized accounting of its costs, and shall include any invoices the conservation district has received from the mosquito district.

(e) As used in this section, the terms ''conservation district,'' ''early flooding programs,'' ''late flooding program,'' ''mosquito district,'' and ''program'' have the same meaning as defined by Section 2921 of the Fish and Game Code.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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.

CHAPTER 399

An act to amend Section 473.3 of the Business and Professions Code, relating to private postsecondary education.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 473.3 of the Business and Professions Code is amended to read:

473.3. (a) Prior to the termination, continuation, or reestablishment of any board or any of the board's functions, the Joint Legislative Sunset Review Committee shall, during the interim recess preceding the date upon which a board becomes inoperative, hold public hearings to receive testimony from the Director of Consumer Affairs, the board involved, and the public and regulated industry. In that hearing, each board shall have the burden of demonstrating a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.

(b) In addition to subdivision (a), in 2002 and every four years thereafter, the committee, in cooperation with the California Postsecondary Education Commission, shall hold a public hearing to receive testimony from the Director of Consumer Affairs, the Bureau for Private Postsecondary and Vocational Education, private postsecondary educational institutions regulated by the bureau, and students of those institutions. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare.

(c) The committee, in cooperation with the California Postsecondary Education Commission, shall evaluate and review the effectiveness and efficiency of the Bureau for Private Postsecondary and Vocational Education, based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.

CHAPTER 400

An act to amend and supplement the Budget Act of 2001, relating to appropriations for the support of the government of the State of California, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. The appropriations made by this act are in augmentation of the appropriations made in Section 2.00 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001) 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. Unless otherwise specified, the references in this act to item numbers refer to items of appropriation in Section 2.00 of the Budget Act of 2001.

SEC. 2. Provision 17 of Item 2660-001-0042 is deleted and the following Provision 17 is added to that item to read:

17. (a) Notwithstanding any other provision of law, of the unexpended funds appropriated in Schedule 2 of this item for personal services, funds for up to 314.9 personnel-years may be used for operating expenses to contract out architectural and engineering services for project delivery, and of the unexpended funds appropriated in Schedule 2 of this item for operating expenses, funds for up to 314.9 personnel-year equivalents may be used for personal services for capital outlay support for project delivery.

(b) Amounts for project delivery in excess of the amounts specified in this provision may be authorized by the Department of Finance for unforeseen critical or emergency situations. Prior to the authorization, a 10-day advance notice shall first be provided to the Chairperson of the Joint Legislative Budget Committee and the chairperson of the budget committee of each house of the Legislature.

SEC. 3. The balance of the sum appropriated in paragraph (49) of Schedule (b) of Item 3790-101-0001 is hereby reappropriated to the Montalvo Association for the purposes of that paragraph.

SEC. 4. The balance of the sum appropriated in paragraph (91) of Schedule (b) of Item 3790-101-0001 is hereby reappropriated to the Montalvo Association for the purposes of that paragraph.

SEC. 5. The balance of the sum appropriated in paragraph (115) of Schedule (b) of Item 3790-101-0001 is hereby reappropriated to the City of South Pasadena for the Garfield Park Walkway replacement.

SEC. 6. The balance of the sum appropriated in paragraph (122) of Schedule (b) of Item 3790-101-0001 is hereby reappropriated to the Friends of Recreation and Parks for the purposes of that paragraph.

SEC. 7. The balance of the sum appropriated in paragraph (157) of Schedule (b) of Item 3790-101-0001 is hereby reappropriated to the Clovis Botanical Gardens Committee, Inc., for the purposes of that paragraph.

SEC. 8. The balance of the sum appropriated in paragraph (158) of Schedule (b) of Item 3790-101-0001 is hereby reappropriated to the Boys and Girls Club of Tulare County for the purposes of that paragraph.

SEC. 9. Item 3790-101-0001 is amended by adding the following provisions:

1. The funds appropriated in paragraph (1) of Schedule (a) of this item for Roberti-Z'berg-Harris recreational grants shall be allocated to the entities identified in, and consistent with the provisions of, Chapter 710 of the Statutes of 2000.

SEC. 10. The balance of the sum appropriated in paragraph (68) of subdivision (b) of Item 3790-101-0001 is hereby reappropriated to Eli Home for planning and expansion.

SEC. 11. The balance of the sum appropriated in Schedule (7) of Item 3790-302-0005 is hereby reappropriated for the acquisition, development, and planning of the project specified in that paragraph.

SEC. 12. The balance of the sum appropriated in paragraph (6) of Item 3790-491 is hereby reappropriated to the City of Huntington Park for the purposes of funding the Bonelli Regional Youth Center.

SEC. 13. The balance of the sum appropriated in paragraph (r) of Provision 1 of Item 3940-101-0001 is hereby reappropriated in accordance with the purposes of that item for Arroyo Burro Beach, Arroyo Quemada Beach, Mission Creek Beach, Refugio State Beach, Gaviota State Beach, and Jalama State Beach.

SEC. 14. The balance of the sum appropriated to the City of Laguna Beach and Aliso Water Management District in subdivision (t) of Provision 1 of Item 3940-101-0001 is hereby reappropriated to the City of Laguna Beach and Aliso Creek Water Management District for the same purposes set forth in subdivision (t) of that provision.

SEC. 15. The balance of the sum appropriated in subdivision (x) of Provision 16 of Item 5180-101-0001 is hereby reappropriated for the Tutorial Program expansion and building renovation at the Al Wooten, Jr. Heritage Center.

SEC. 16. The sum appropriated in Item 6110-001-0001 is hereby reduced by sixty thousand dollars ($60,000) by reducing the amount appropriated in Schedule (7.6) of that item by that amount and by deleting paragraph (1) of Provision 37.

SEC. 17. The sum appropriated in Item 6110-101-0001 is hereby reduced by six hundred forty thousand dollars ($640,000) by deleting subdivision (b) of Provision 1 and by adding subdivision (ag) to Provision 1, to read:

(ag) Of the funds appropriated in this item, sixty thousand dollars ($60,000) shall be used for a Weekend Parental Involvement Pilot Program.

SEC. 18. The sum of seven hundred thousand dollars ($700,000) is hereby appropriated in augmentation of the sum appropriated in Item 6110-233-0001, for allocation to the Mount Pleasant School District for the National Hispanic University Lease Purchase Agreement.

SEC. 19. The balance of the sum appropriated in subdivision (c) of Provision 1 of Item 6120-101-0001 is hereby reappropriated to the City of Westlake for the Westlake Village Library.

SEC. 20. The balance of the sum appropriated in subdivision (d) of Provision 1 of Item 6120-101-0001 is hereby reappropriated to the City of Agoura Hills for the Agoura Hills Library.

SEC. 21. The balance of the sum appropriated in paragraph (16) of Schedule (a) of Item 8260-103-0001 is hereby reappropriated to the Glendale Police Officers' Association Foundation for the purposes of that paragraph.

SEC. 22. The sum appropriated in paragraph (35) of Schedule (a) of Item 8260-103-0001 is reappropriated as follows:

(a) The sum of fifty thousand dollars ($50,000) is available for expenditure in accordance with the terms of that item for the Napa Valley Opera House.

(b) The sum of fifty thousand dollars ($50,000) is available for expenditure in accordance with the terms of that item for COPIA: The American Center for Wine, Food & the Arts.

SEC. 23. Notwithstanding the reporting requirements in Item 9210-106-0001, the deadline for submission of reports to the Department of Finance is extended to December 15, 2001.

SEC. 24. The balance of the sum appropriated in paragraph (17) of Schedule (a) of Item 9210-107-0001 is hereby reappropriated to the City of Los Alamitos for the purposes of that paragraph.

SEC. 25. The balance of the sum appropriated in paragraph (28) of Schedule (a) of Item 9210-107-00001 is hereby reappropriated to the County of Shasta for purposes of that paragraph.

SEC. 26. The balance of the sum appropriated in paragraph (58) of Schedule (a) of Item 9210-107-0001 is hereby reappropriated to the City of Redding for the purposes of that paragraph.

SEC. 27. The balance of the sum appropriated in paragraph (70) of subdivision (a) of Item 9210-107-0001 is hereby reappropriated to the Volunteers of America for the purposes of that paragraph.

SEC. 28. The balance of the sum appropriated in paragraph (85) of Schedule (a) of Item 9210-107-0001 is hereby reappropriated to the County of Los Angeles for the purposes of that paragraph.

SEC. 29. The list of funds specified in subdivision (a) of Section 25.10 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001) is amended to add the following fund:

0274 Business Reinvestment Fund

SEC. 30. Notwithstanding any other provision of law, the balance of the sum appropriated to the City of Avenal in paragraph (37) of Schedule (a) of Item 3790-101-0001 of Section 2.00 of the Budget Act of 2000 (Chapter 52 of the Statutes of 2000) is hereby reappropriated to the Avenal Historical Society for the purposes of that paragraph.

SEC. 31. Notwithstanding any other provision of law, the balance of the sum appropriated to the City of San Gabriel in paragraph (55) of Schedule (a) of Item 3790-101-0001 of Section 2.00 of the Budget Act of 2000 (Chapter 52 of the Statutes of 2000) to expand the Asian Youth Center with the addition of a second floor is hereby reappropriated to the Asian Youth Center for the Asian Youth Center facility expansion.

SEC. 32. Notwithstanding any other provision of law, the balance of the sum appropriated in paragraph (58) of Schedule (a) of Item 3790-101-0001 of Section 2.00 of the Budget Act of 2000 (Chapter 52 of the Statutes of 2000) to build a community facility in the City Terrace neighborhood of East Los Angeles is hereby reappropriated for the acquisition of a facility in that neighborhood to be used for the purposes stated in that paragraph.

SEC. 33. Notwithstanding any other provision of law, the balance of the sum appropriated to the City of Los Angeles in paragraph (69) of Schedule (a) of Item 3790-101-0001 of Section 2.00 of the Budget Act of 2000 (Chapter 52 of the Statutes of 2000) is hereby reappropriated directly to the Chinatown Service Center for the purpose of that paragraph.

SEC. 34. Notwithstanding any other provision of law, the balance of the sum appropriated in subparagraph (a) of paragraph (5) of Schedule (a) of Item 3790-102-0005 of Section 2.0 of the Budget Act of 2000 (Chapter 52 of the Statutes of 2000) is hereby reappropriated to the Coleman Children and Youth Services for the purposes of that subparagraph.

SEC. 35. Item 3790-102-0383 is amended by adding Provision 3 to read:

3. The Department of Parks and Recreation shall establish guidelines and procedures for awarding grants pursuant to this item to public agencies and nonprofit organizations for the acquisition and development of park and recreational areas and facilities. Priority for awarding grants shall be given to public agencies and nonprofit organizations that provide matching grants for the purposes stated in this provision.

SEC. 36. Notwithstanding any other provision of law, of the funds appropriated pursuant to Schedule (a) of Item 4200-101-0001 of Section 2.00 of the Budget Act of 2000 (Chapter 52 of the Statutes of 2000), to the State Department of Alcohol and Drug Programs for local assistance, two hundred fifty thousand dollars ($250,000) shall be allocated to the

People in Progress Alcohol Recovery Program for use in the treatment and recovery of alcohol abusers.

SEC. 37. Notwithstanding any other provision of law, the amount apportioned to the City of Lancaster by Section 5 of Chapter 1003 of the Statutes of 1999 for the acquisition of land for the YMCA/Lancaster Park may be utilized by the City of Lancaster for the design and construction of the YMCA facility on city-owned land in Lancaster Park.

SEC. 38. Notwithstanding any other provision of law, the balance of the sum appropriated to the City of Chino Hills in paragraph (8.8) of Schedule (a) of Item 3790-102-0001 of the Budget Act of 1998 (Chapter 324 of the Statutes of 1998) is hereby reappropriated to the City of Chino Hills for development and improvement of the Western Hills Park.

SEC. 39. Notwithstanding any other provision of law, on the condition that, and to the extent that, the funds appropriated pursuant to subdivision (d) of Schedule (1) of Section 2.00 of Item 3790-101-0140 of the Budget Act of 1997 (Chapter 282 of the Statutes of 1997) to the Department of Parks and Recreation for allocation to the Rim of the World Regional Park District for purposes of the Lake Arrowhead Park have not been, or are no longer are, legally encumbered, those funds are hereby reappropriated to the Department of Parks and Recreation for allocation to the Rim of the World Unified School District for open-space and recreational purposes.

SEC. 40. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make certain necessary augmentations and adjustments to the appropriations made by the Budget Act of 2001 for support of state government for the 2001–02 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 401

An act to amend Sections 1090, 35120, and 72425 of the Education Code, relating to school boards.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. The Legislature finds and declares that, with the many reforms that have been enacted in recent years and the increase in authority and responsibility that governing board members are expected to ably and knowledgeably exercise, it is reasonable to expect the members of the governing board of a school district, community college district, and a county board of education to participate in training and education programs that assist them in fulfilling their obligations and carrying out their duties.

SEC. 2. Section 1090 of the Education Code is amended to read:

1090. (a) The board of supervisors may allow, as compensation, to each member of the county board of education a sum not to exceed the following amounts:

(1) In any class one county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed six hundred dollars ($600) per month.

(2) In any class two county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed four hundred dollars ($400) per month.

(3) In any class three county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed three hundred dollars ($300) per month.

(4) In any class four county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two hundred dollars ($200) per month.

(5) In any class five, class six, class seven, or class eight county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed one hundred sixty dollars ($160) per month.

(b) Any member who does not attend all meetings held in any month may receive as compensation for his or her services an amount not greater than the maximum amount allowed by subdivision (a) divided by the number of meetings held, and multiplied by the number of meetings actually attended.

(c) The amount of compensation shall be determined by the county board of supervisors, or, in a county having a fiscally independent county board of education, by the county board of education.

(d) A member of a county board of education may be paid for any meeting for which he or she is absent if the board by resolution duly

adopted and included within its minutes finds that at the time of the meeting he or she was performing services outside the meeting on behalf of the board, he or she was ill or on jury duty, or the absence was due to a hardship deemed acceptable by the board.

(e) There may also be allowed to each member who uses a privately owned automobile in the discharge of necessary official duties as a member of the county board of education, the same amount as allowed by any county official in the performance of his or her official duties. The mileage rate allowed in this section shall be based on the total mileage claimed in a calendar month.

(f) For purposes of this section, the classification of counties shall be determined pursuant to Section 1205.

(g) On an annual basis, the county board of education may increase the compensation of individual board members beyond the limits delineated in this section, in an amount not to exceed 5 percent based on the present monthly rate of compensation. Any increase made pursuant to this section shall be effective upon approval by the county board of education. This action may be rejected by a majority of the voters in that county voting in a referendum established for that purpose, as prescribed by Chapter 3 (commencing with Section 17200) of Part 2 of Division 17 of the Elections Code.

SEC. 3. Section 35120 of the Education Code is amended to read:

35120. (a) (1) In any school district in which the average daily attendance for the prior school year exceeded 400,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two thousand dollars ($2,000) per month.

(2) In any school district that is not located in a city and county, and in which the average daily attendance for the prior school year exceeded 60,000, the governing board may prescribe, as compensation for the services of each member of the board who actually attends all meetings held, a sum not to exceed one thousand five hundred dollars ($1,500) in any month.

(3) In any school district in which the average daily attendance for the prior school year was 60,000, or less, but more than 25,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed seven hundred fifty dollars ($750) in any month.

(4) In any school district in which the average daily attendance for the prior school year was 25,000, or less, but more than 10,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as

compensation for his or her services a sum not to exceed four hundred dollars ($400) in any month.

(5) In any school district in which the average daily attendance for the prior school year was 10,000 or less but more than 1,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two hundred forty dollars ($240) in any month.

(6) In any school district in which the average daily attendance for the prior school year was 1,000 or less but more than 150, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed one hundred twenty dollars ($120) in any month.

(7) In any school district in which the average daily attendance for the prior school year was less than 150, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed sixty dollars ($60) per month.

(8) Any member who does not attend all meetings held in any month may receive, as compensation for his or her services, an amount not greater than the maximum amount allowed by this subdivision divided by the number of meetings held and multiplied by the number of meetings actually attended.

(9) For the purposes of providing compensation pursuant to paragraphs (1) to (7), inclusive, average daily attendance for the prior school year may be increased by a school district's percentage of excused absences reported for the 1996–97 fiscal year.

(b) The compensation of members of the governing board of a school district newly organized or reorganized shall be governed by subdivision (a). For this purpose, the total average daily attendance in all of the schools of the district in the school year in which the organization or reorganization became effective pursuant to Section 4062 shall be deemed to be the average daily attendance in the district for the prior school year.

(c) A member may be paid for any meeting when absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting he or she is performing services outside the meeting for the school district or districts, he or she was ill or on jury duty, or the absence was due to a hardship deemed acceptable by the board.

(d) The compensation shall be a charge against the funds of the school district. If the city board of education or the governing board of the district is the governing board of more than one school district, the compensation shall be charged against and paid by the respective school

districts in the same proportion as the salary of the city superintendent of schools is charged against them. Compensation shall be reduced by an amount equal to any salary or compensation paid to the members of the city board of education from any funds of the city.

(e) On an annual basis, the governing board may increase the compensation of individual board members beyond the limits delineated in this section, in an amount not to exceed 5 percent based on the present monthly rate of compensation. Any increase made pursuant to this section shall be effective upon approval by the governing board. The action may be rejected by a majority of the voters in that district voting in a referendum established for that purpose, as prescribed by Chapter 3 (commencing with Section 17200) of Part 2 of Division 17 of the Elections Code.

SEC. 4. Section 72425 of the Education Code is amended to read:

72425. (a) (1) In any community college district that is not located in a city and county, and in which the average daily attendance for the prior school year exceeded 60,000, the governing board may prescribe, as compensation for the services of each member of the board who actually attends all meetings held by the board, a sum not to exceed one thousand five hundred dollars ($1,500) in any month.

(2) In any community college district in which the average daily attendance for the prior school year was 60,000 or less, but more than 25,000, each member of the governing board of the district who actually attends all meetings held by the board, may receive as compensation for his or her services a sum not to exceed seven hundred fifty dollars ($750) in any month.

(3) In any community college district in which the average daily attendance for the prior school year was 25,000 or less, but more than 10,000, each member of the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed four hundred dollars ($400) in any month.

(4) In any community college district in which the average daily attendance for the prior school year was 10,000 or less, but more than 1,000, each member of the governing board of the district who actually attends all meetings held by the board may receive as compensation for his or her services a sum not to exceed two hundred forty dollars ($240) in any month.

(5) In any community college district in which the average daily attendance for the prior school year was 1,000 or less, but more than 150, each member of the governing board of the district who actually attends all meetings held by the board may receive as compensation for his or her services a sum not to exceed one hundred twenty dollars ($120) in any month.

(b) Any member of a governing board who does not attend all meetings held by the board in any month may receive, as compensation for his or her services, an amount not greater than a pro rata share of the number of meetings actually attended based upon the maximum compensation authorized by this subdivision.

(c) The compensation of members of the governing board of a community college district newly organized or reorganized shall be governed by subdivision (a). For this purpose, the total average daily attendance in all of the community colleges of the district in the school year in which the organization or reorganization became effective pursuant to Section 4062 shall be deemed to be the average daily attendance in the district for the prior school year.

(d) A member may be paid for any meeting when absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting he or she is performing services outside the meeting for the community college district, he or she was ill or on jury duty, or the absence was due to a hardship deemed acceptable by the board. The compensation shall be a charge against the funds of the district.

(e) On an annual basis, the governing board may increase the compensation of individual board members beyond the limits delineated in this section, in an amount not to exceed 5 percent based on the present monthly rate of compensation. Any increase made pursuant to this section shall be effective upon approval by the governing board. The action may be rejected by a majority of the voters in that district voting in a referendum established for that purpose, as prescribed by Chapter 3 (commencing with Section 17200) of Part 2 of Division 17 of the Elections Code.

CHAPTER 402

An act relating to the California State University, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. (a) Notwithstanding any other provision of law, the Trustees of the California State University may exchange a portion of the 262-acre parcel of property known as the lemon orchard parcel and maintained by California State University, Channel Islands, and that is

located approximately eight miles northwest of the campus of California State University, Channel Islands, for a parcel bounded by Lewis Road on the northwest, California State University, Channel Islands, and the Camrosa Water District on the south, and farmlands on the northeast and east.

(b) Any exchange of properties carried out pursuant to this section shall be for no less than fair market value for the lemon orchard parcel, as determined by an independent appraisal. Compensation for the lemon orchard parcel may include land, or a combination of land and money.

(c) Notwithstanding any other provision of law, any exchange of properties carried out pursuant to this section shall be subject to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

(d) Notwithstanding Section 13340 of the Government Code or any other provision of law, any funds received from the transaction authorized by this section are hereby appropriated to the trustees for expenditure, without regard to fiscal year, for construction and capital development of projects that are eligible for state support, following review and approval by the Department of Finance. The expenditure of funds received under this section shall be for projects that are consistent with the master plan of the campus for which the project is proposed. Any funds received under this subdivision that are not encumbered prior to January 1, 2007, shall revert to the General Fund.

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

In order to expedite real estate transactions that are important to the advancement of the educational mission of the California State University, it is necessary that this act take effect immediately.

CHAPTER 403

An act to amend Section 89440 of, and to amend the heading of Chapter 4.7 (commencing with Section 89440) of Part 55 of, the Education Code, relating to the California State University.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. The heading of Chapter 4.7 (commencing with Section 89440) of Part 55 of the Education Code is amended to read:

CHAPTER 4.7. CALIFORNIA STATE UNIVERSITY PROGRAM FOR EDUCATION AND RESEARCH IN BIOTECHNOLOGY

SEC. 2. Section 89440 of the Education Code is amended to read:

89440. (a) The Legislature hereby finds and declares all of the following:

(1) The biotechnology industry in California is a rapidly growing industry that will be a critical factor in the state's economic success in the new millennium.

(2) The California State University plays a significant role in the production and maintenance of the workforce for this rapidly growing industry.

(3) The California State University Program for Education and Research in Biotechnology (program) was created in 1987 to provide a coordinated and amplified development of biotechnology research and education within the California State University, to foster competitiveness in the industry on both the state and national levels, to facilitate training of a sufficient number of biotechnology technicians and scientists, to catalyze technology transfer and enhance intellectual property protection, and to facilitate the acquisition and long-term maintenance of state-of-the-art biotechnology resource facilities.

(4) The program facilitates interdisciplinary cooperative activities between the biology and chemistry departments on all California State University campuses and between faculty and a number of allied academic and research units, including bioengineering, agricultural biotechnology, environmental and natural resources, molecular ecology, and marine biotechnology.

(5) The program conducts a number of activities, including a competitive applied research and education grants program, the upgrade of biotechnology instructional and research equipment, the development of specialized training facilities, and involvement in secondary educator inservice and preservice biotechnological training.

(6) The California State University conducted a Bioscience Innovation and Training Center Feasibility Study (study) to assess the feasibility of creating a multiuse technology innovation and training center in Pasadena that can serve as an anchor and catalyst for biotechnology enterprise growth in the Los Angeles region.

(7) The study was completed in December 2000, and concluded that there is strong demand for biotechnology workforce training, research,

manufacturing, and incubation services that warrant the development of a bioscience in Pasadena. When Pasadena was evaluated against critical success factors for biotechnology community development, it scored highly on many factors, including a critical mass of cutting-edge research, accessibility to transportation, quality of life, experienced entrepreneurs, access to capital, and availability of a skilled workforce. The steering committee identified four main components for the proposed facility:

(A) Workforce training offering practical, hands-on learning experiences involving multidisciplinary, multilevel teams of researchers, technicians, production specialists, apprentices, and students.

(B) Core research laboratories and instrument beta testing coupled with process manufacturing.

(C) New business incubator space, including wet labs and shared entrepreneurial services and support.

(D) Bioinformatics (convergence of biology, mathematics, and computing) as a common theme running throughout the center.

(8) The Bioscience Innovation and Training Center Feasibility Study, conducted by the California State University, found that the development of a bioscience center in Pasadena is warranted.

(9) A successful biotechnology resource facility requires a partnership of the city, industry, and education partners, as well as public and private collaboration, in order to develop projects that leverage economic opportunities in the Los Angeles basin and support business throughout California.

(10) It is critical that, for a successful resource facility, the public and private sectors work together to achieve the following components: workforce training, research in core research laboratories, new business incubator space, and manufacturing.

(b) It is the intent of the Legislature to accomplish both of the following:

(1) To provide additional state funding, if state revenues allow, to the California State University to maintain the California State University Program for Education and Research in Biotechnology at a level that will maintain and enhance its role in the preparation of the workforce in this critical industry.

(2) To provide additional state funding to the California State University for development of a bioscience center in Pasadena, subject to appropriation in the annual Budget Act, that would integrate research and innovation, applied workforce training, and incubation of new bioscience enterprise. The development of the bioscience center would include a partnership among local educational institutions, the local bioscience industry, and government. These funds will be used for the

development of a pilot bioinnovation workforce training program that bridges the gap between classroom instruction and workforce practice, using state-of-the-art instrumentation and real-world development projects, and for final site assessment to ensure due diligence prior to the selection of a final site. It is the intent of the Legislature that, following the establishment of the program, site, and center, efforts be made to promote the biotechnology center through trade programs operated under the Technology, Trade and Commerce Agency and other public agencies.

CHAPTER 404

An act to amend Sections 66540.20 and 66540.22 of the Government Code, relating to transportation.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 66540.20 of the Government Code is amended to read:

66540.20. (a) The authority shall prepare and adopt a San Francisco Bay Area Water Transit Implementation and Operations Plan. The plan shall include all appropriate landside, vessel, and support elements, operational and performance standards, and policies. In preparing the plan, the authority shall review and consider, in addition to other materials and information, the findings presented in the document entitled ''San Francisco Bay Area Water Transit Initiative,'' dated February 1999, and prepared by the Bay Area Council and the Bay Area Economic Forum, and shall include, but need not be limited to, all environmental standards and conditions set forth in that initiative. The adoption of the plan shall be subject to public hearings in all nine San Francisco Bay area counties, and shall be reviewed by the Metropolitan Transportation Commission. After that review, the procedure regarding the plan shall continue as follows:

(1) On or before December 12, 2002, the authority shall submit a preliminary draft of the final plan to the Legislature for review.

(2) On or after the date of completion of all programmatic environmental impact reports in connection with adoption of the final plan, the authority shall submit the final plan to the Legislature for review and statutory approval.

(3) The authority may implement the final plan only after the Legislature has approved it by statute.

(b) The plan shall investigate and provide for terminal locations throughout the San Francisco Bay area.

(c) The authority shall consult with the Metropolitan Transportation Commission in preparation of the plan. The commission shall provide input and data in response to the authority's requests in a responsive and timely manner. The authority shall submit the plan to the commission for review and comment not later than 90 days prior to the date the plan is submitted to the Legislature. The commission shall prepare and transmit comments on the plan to the authority not later than 90 days after the date the plan is submitted to the commission for review. The authority shall include any comments received from the commission when submitting the plan to the Legislature.

(d) In compliance with subdivision (c), the Metropolitan Transportation Commission shall do all of the following:

(1) Provide the authority with relevant data and analytical criteria for the evaluation of the cost-effectiveness of alternative forms of transit, high-occupancy vehicle lane expansion, or other transportation investments in the corridors that potentially would be served by the authority.

(2) Collaborate with the authority in updating the water transit demand model to include travel forecasting on each of the proposed water transit corridors.

(3) Collaborate with the authority in the development of feeder system proposals.

(4) Identify all necessary and appropriate steps required to coordinate the water transit system with other elements of the San Francisco Bay area transportation network.

(e) The primary focus of the authority and the plan shall be to provide new or expanded water transit services and related ground transportation terminal access services that were not in operation as of June 30, 1999. The authority shall seek to cooperatively involve in the implementation, planning, and operations all existing water transit services and related ground transportation agencies in whose jurisdictions existing or planned water transit terminals are located. The authority shall operate in good faith to avoid negatively impacting water transit services and related ground transportation terminal access services in existence as of June 30, 1999. The authority may not request an allocation of any funds that were available to the Metropolitan Transportation Commission for allocation on June 30, 1999, including the revenues dedicated from state-owned bridges to ferry services as of June 30, 1999, and revenues derived continuously from sources in the amounts and manner as specified in law in effect as of June 30, 1999.

(f) The authority may not operate water transit services that are scheduled at the same time, from the same origin, and to the same destination as publicly sponsored services, if those public services were in operation as of June 30, 1999. The authority shall provide ferry services at only those terminals in which docking rights have been obtained with the consent of the owner of those rights.

(g) Following approval by the Legislature, by statute, of the plan, the authority shall negotiate in good faith, as described below, with public sponsors of existing water transit services and related ground transportation terminal access services to provide services in the approved plan that would expand or augment existing services in their service district, as defined by law, or in plans of the Metropolitan Transportation Commission that existed and were in effect as of June 30, 1999. Good faith negotiations shall include all of the following steps:

(1) Notification by certified mail from the authority to the public sponsor of existing water transit services or related ground transportation terminal access services, hereafter referred to as the notified agency, setting forth the specific services to be negotiated, including performance standards and conditions and cost reimbursement available according to the plan approved by the Legislature.

(2) A period of 30 days from receipt of the notification required under paragraph (1) for the notified agency to declare in writing to the authority by certified mail their intent to negotiate in good faith. If the notified agency does not so declare in writing to the authority within 30 days, the notified agency shall be deemed not interested in negotiating for the service and the authority may announce a competitive bid process or take actions to directly operate the service if the board of directors of the authority makes a public finding that the action is in the public interest.

(3) A period of 90 days from declaration of intent to negotiate by the notified agency for the authority and notified agency to negotiate in good faith to reach agreement.

(4) The authority and notified agency, by mutual agreement, may extend the period for good faith negotiations.

(5) Notwithstanding the procedure described in subdivision (h), if at the end of 90 days or the mutually agreed-upon extension period for negotiations, the authority and the notified agency have not reached agreement for operation of the service, the authority may announce a competitive bid process. The notified agency may participate in that competitive bid process.

(h) If at the conclusion of the good faith negotiations process there is a dispute between the authority and the notified agency as to the impact of proposed new services on existing services, the matter shall be submitted to the Metropolitan Transportation Commission for

resolution pursuant to Section 66516.5 of the Government Code. The Metropolitan Transportation Commission shall make a determination based on the demand model adopted by the authority as to whether the proposed new service will have a minor or major impact on services existing as of June 30, 1999. A minor impact means an impact that reasonably and potentially diverts less than 15 percent of the passengers using services that were in existence as of June 30, 1999. A major impact means an impact that reasonably and potentially diverts 15 percent or more of the passengers using services that were in existence as of June 30, 1999. If the proposed new service will have a major impact, the authority may not operate a water transit service in that location without mutual agreement between the authority and the notified agency. If the proposed new service will have a minor impact, the authority may initiate service according to the procedures contained in subdivision (g).

SEC. 2. Section 66540.22 of the Government Code is amended to read:

66540.22. The San Francisco Bay Area Water Transit Implementation and Operations Plan shall include all of the following:

(a) A detailed description of the high-speed water transit system, including, but not limited to, all routes to be operated and terminals to be served during the 10-year period following funding of the authority. The description may include phasing of the routes to be served and terminals to be constructed.

(b) An adopted demand model based upon ridership surveys conducted throughout the region and an updated demand model developed by the Metropolitan Transportation Commission.

(c) A water transit demand analysis, based upon the demand model, of the demand forecast and cost-effectiveness for the water transit system as a whole and for each corridor to be served.

(d) Architectural design criteria and standards for terminals and landside facilities to meet the performance objectives and operational criteria. The architectural design criteria and standards for terminals shall be developed in cooperation with the community advisory committee and in consultation with local jurisdictions that are prospective hosts of terminals for the water transit system.

(e) An intermodal plan to connect water transit services with other modes of transportation and public transit, including, but not limited to, cooperative arrangements with existing public transit services and new intermodal services. The intermodal plan shall be developed in cooperation with the community advisory committee, the technical advisory committee, and existing ground transportation agencies.

(f) A feasibility analysis and proposal for the use of new technologies and alternative fuels in marine engines and ground transportation intermodal services, to the extent feasible, to minimize air emission and

water pollution impacts from the system operations. The new technologies and alternative fuels studied in the feasibility analysis and proposal for use in marine engines shall include, but need not be limited to, natural gas, 100 percent biodiesel, hybrid solar in combination with electric or wind power, and hybrid solar in combination with both solar and wind power. The analysis shall be conducted in cooperation with the Bay Area Air Quality Management District, the Regional Water Quality Control Board, and the Bay Conservation and Development Commission.

(g) A plan for monitoring air emissions and water impacts that is mutually agreed upon by the authority and the entities listed in subdivision (f).

(h) Design specifications for vessels, consistent with the architectural design criteria and standards for the terminals and landside facilities and the feasibility analysis to minimize air emission impacts.

(i) A plan for acquiring the requisite vessels, including, but not limited to, a proposed request for proposals, that incorporates the design specifications and seeks to support shipbuilding and fleet maintenance within the region to the extent possible.

(j) A plan for ensuring safety of vessel operations traveling on the San Francisco Bay. The plan shall be developed in cooperation with the California Maritime Academy and the United States Coast Guard.

(k) A systemwide regional programmatic environmental impact report and study of the plan, consistent with the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) , and consistent with the substantive requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.). The report shall include an independent evaluation conducted by the Bay Area Air Quality Management District to assess the air quality impacts of the complete water transit system, as set forth in the San Francisco Bay Area Water Transit Implementation and Operations Plan, in comparison to transporting the same number of people over the same distance by motor vehicles and other modes of transportation.

(*l*) An overall funding and financing plan based upon the detailed description of the water transit system and demand analysis, including, but not limited to, acquisition and construction phasing.

(m) A projection of capital and cash-flow requirements, including, but not limited to, costs for vessels and associated maintenance facilities, terminals and associated land use costs, and costs for feeder vehicles and associated maintenance facilities.

(n) A projection of operating costs and revenues, including, but not limited to, projected patronage, fare structure, and fare revenues for water transit and feeder services.

(o) A proposal for ongoing operating financial support.

(p) An analysis of the cost-effectiveness of the water transit system in comparison to other options for mobility and disaster relief and recovery. The analysis shall be prepared in cooperation with the Metropolitan Transportation Commission.

CHAPTER 405

An act to add Section 56341.1 to, and to repeal and add Section 56341 of, the Education Code, relating to special education.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 56341 of the Education Code is repealed.

SEC. 2. Section 56341 is added to the Education Code, to read:

56341. (a) Each meeting to develop, review, or revise the individualized education program of an individual with exceptional needs shall be conducted by an individualized education program team.

(b) The individualized education program team shall include all of the following:

(1) One or both of the pupil's parents, a representative selected by a parent, or both, in accordance with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(2) At least one regular education teacher of the pupil, if the pupil is, or may be, participating in the regular education environment. If more than one regular education teacher is providing instructional services to the individual with exceptional needs, one regular education teacher may be designated by the district, special education local plan area, or county office to represent the others.

The regular education teacher of an individual with exceptional needs shall, to the extent appropriate, participate in the development, review, and revision of the pupil's individualized education program, including assisting in the determination of appropriate positive behavioral interventions and strategies for the pupil and supplementary aids and services, and program modifications or supports for school personnel that will be provided for the pupil, consistent with paragraph (3) of subsection (a) of Section 300.347 of Title 34 of the Code of Federal Regulations.

(3) At least one special education teacher of the pupil, or if appropriate, at least one special education provider of the pupil.

(4) A representative of the district, special education local plan area, or county office who meets all of the following :

(A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of individuals with exceptional needs.

(B) Is knowledgeable about the general curriculum.

(C) Is knowledgeable about the availability of resources of the local educational agency.

(5) An individual who conducted an assessment of the pupil or who is knowledgeable about the assessment procedures used to assess the pupil, and is familiar with the assessment results or recommendations. The individual shall be qualified to interpret the instructional implications of the assessment results. The individual may be a member of the team described in paragraphs (2) to (6), inclusive.

(6) At the discretion of the parent, guardian, or the district, special education local plan area, or county office, other individuals who have knowledge or special expertise regarding the pupil, including related services personnel, as appropriate. The determination of whether the individual has knowledge or special expertise regarding the pupil shall be made by the party who invites the individual to be a member of the individualized education program team.

(7) Whenever appropriate, the individual with exceptional needs.

(c) For a pupil suspected of having a specific learning disability, at least one member of the individualized education program team shall be qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. At least one team member other than the pupil's regular teacher shall observe the pupil's academic performance in the regular classroom setting. In the case of a child who is less than schoolage or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(d) (1) In the case of transition services, the district, special education local plan area, or county office shall invite an individual with exceptional needs of any age to attend his or her individualized education program meeting if a purpose of the meeting will be the consideration of either, or both, of the following:

(A) The individual's transition service needs under subdivision (a) of Section 56345.1.

(B) The needed transition services for the individual under subdivision (b) of Section 56345.1.

(2) If the individual with exceptional needs does not attend the individualized education program meeting, the district, special education local plan area, or county office shall take steps to ensure that the individual's preferences and interests are considered.

(3) When implementing the requirements of subdivision (b) of Section 56345.1, the district, special education local plan area, or county office also shall invite to the individualized education program team meetings a representative that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the district, special education local plan area, or county office shall take other steps to obtain participation of the other agency in the planning of any transition services.

(e) A district, special education local plan area, or county office may designate another local educational agency member of the individualized education program team to serve also as the representative required pursuant to paragraph (4) of subdivision (b) if the requirements of subparagraphs (A), (B), and (C) of paragraph (4) of subdivision (b) are met.

SEC. 3. Section 56341.1 is added to the Education Code, to read:

56341.1. (a) When developing each pupil's individualized education program, the individualized education program team shall consider the following:

(1) The strengths of the pupil and the concerns of the parents or guardians for enhancing the education of the pupil.

(2) The results of the initial assessment or most recent assessment of the pupil.

(3) As appropriate, the results of the pupil's performance on any general state or districtwide assessment programs.

(b) The individualized education program team shall do the following:

(1) In the case of a pupil whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior.

(2) In the case of a pupil with limited English proficiency, consider the language needs of the pupil as those needs relate to the pupil's individualized education program.

(3) In the case of a pupil who is blind or visually impaired, provide for instruction in braille and the use of braille unless the individualized education program team determines, after an assessment of the pupil's reading and writing skills, needs, and appropriate reading and writing media, including an assessment of the pupil's future needs, that instruction in braille is not appropriate for the pupil.

(4) Consider the communication needs of the pupil, and in the case of the pupil who is deaf or hard of hearing, consider the pupil's language and communication needs, opportunities for direct communications with peers and professional personnel in the pupil's language and

communication mode, academic level, and full range of needs, including opportunities for direct instruction in the pupil's language and communication mode.

(5) Consider whether the pupil requires assistive technology devices and services.

(c) If, in considering the special factors described in subdivisions (a) and (b), the individualized education program team determines that a pupil needs a particular device or service, including an intervention, accommodation, or other program modification, in order for the pupil to receive a free appropriate public education, the individualized education program team shall include a statement to that effect in the pupil's individualized education program.

(d) The individualized education program team shall revise the individualized education program, as appropriate, to address among other matters the following:

(1) Any lack of expected progress toward the annual goals and in the general curriculum, where appropriate.

(2) The results of any reassessment conducted pursuant to Section 56381.

(3) Information about the pupil provided to, or by, the parents or guardians, as described in subdivision (b) of Section 56381.

(4) The pupil's anticipated needs.

(5) The factors described in subdivision (a).

(e) The parent or guardian shall have the right to present information to the individualized education program team in person or through a representative and the right to participate in meetings, relating to eligibility for special education and related services, recommendations, and program planning.

(f) (1) Notwithstanding Section 632 of the Penal Code, the parent or guardian, district, special education local plan area, or county office shall have the right to record electronically the proceedings of individualized education program team meetings on an audiotape recorder. The parent or guardian, district, special education local plan area, or county office shall notify the members of the individualized education program team of their intent to record a meeting at least 24 hours prior to the meeting. If the district, special education local plan area, or county office initiates the notice of intent to audiotape record a meeting and the parent or guardian objects or refuses to attend the meeting because it will be tape recorded, then the meeting shall not be recorded on an audiotape recorder.

(2) The Legislature hereby finds as follows:

(A) Under federal law, audiotape recordings made by a district, special education local plan area, or county office are subject to the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec.

1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under Sections 300.560 to 300.575, inclusive, of Part 34 of the Code of Federal Regulations.

(B) Parents or guardians have the right, pursuant to Sections 99.10 to 99.22, inclusive, of Title 34 of the Code of Federal Regulations, to do all of the following:

(i) Inspect and review the tape recordings.

(ii) Request that the tape recordings be amended if the parent or guardian believes that they contain information that is inaccurate, misleading, or in violation of the rights of privacy or other rights of the individual with exceptional needs.

(iii) Challenge, in a hearing, information that the parent or guardian believes is inaccurate, misleading, or in violation of the individual's rights of privacy or other rights.

(g) It is the intent of the Legislature that the individualized education program team meetings be nonadversarial and convened solely for the purpose of making educational decisions for the good of the individual with exceptional needs.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

CHAPTER 406

An act to amend Sections 42291.5 and 42322 of the Public Resources Code, relating to recycling.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 42291.5 of the Public Resources Code is amended to read:

42291.5. For each pound of recycled plastic postconsumer material purchased from a source of recycled plastic postconsumer material in this state for use in the manufacture of plastic trash bags, or other products manufactured with recycled plastic postconsumer material in compliance with this chapter, the board shall credit the manufacturer certifying pursuant to Section 42293 with having used 1.2 pounds of

recycled plastic postconsumer material toward compliance with the requirements of Section 42291.

SEC. 2. Section 42322 of the Public Resources Code is amended to read:

42322. (a) Any violation of this chapter is a public offense punishable by a fine of not more than one hundred thousand dollars ($100,000).

(b) In addition to the penalty specified under subdivision (a), any violation of this chapter may be subject to a civil penalty assessed by the board of not more than fifty thousand dollars ($50,000) for each violation, pursuant to a notice and hearing procedure that conforms with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The total annual fines or penalties assessed upon a violator of this chapter shall not exceed one hundred thousand dollars ($100,000).

(d) The board shall annually publish a list by July 1 setting forth any fines or penalties that have been levied against a violator of this chapter in the preceding calendar year, for failure to comply with the requirements of this chapter.

(e) The board shall deposit all penalties or fines paid pursuant to this section into the Rigid Container Account, which is hereby created in the Integrated Waste Management Fund in the State Treasury. The moneys deposited in the Rigid Container Account shall be expended by the board, upon appropriation by the Legislature, to assist local governmental agencies to develop and implement collection and processing systems for the recycling of materials that are subject to this chapter, for the development of markets for these materials, and for the board's costs of implementing this chapter.

SEC. 3. (a) On or before January 1, 2003, the California Integrated Waste Management Board shall conduct a study of the use and disposal of polystyrene in the state and report to the Governor and the Legislature on the findings and recommendations made by the study.

(b) The study required by subdivision (a) shall do all of the following:

(1) Analyze how polystyrene, including, but not limited to, food service and transport packaging, is being used by consumers before it enters the waste stream, the amount of polystyrene being landfilled annually in the state, the amount being reused and recycled, and the related environmental and public health implications, if any.

(2) Recommend methods for source reducing, reusing, and recycling, and for diverting polystyrene from the state's landfills.

(3) Address the cost of the disposal of polystyrene in volume and weight terms.

(4) Examine and identify current and potential markets for recycled polystyrene products.

CHAPTER 407

An act to amend Section 51142 of the Government Code, and to amend Sections 75.11, 170, 205.5, 830, 830.1, 833, 1606, 5814, 11273, 11338, and 11339 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 51142 of the Government Code is amended to read:

51142. (a) Upon immediate rezoning of a parcel in a timberland production zone, a tax recoupment fee shall be imposed on the owner of the land. Within 90 days following rezoning of land in the timberland production zone the county assessor shall reassess the rezoned parcels on the basis of the value of the property in its rezoned use. The assessor shall certify this value to the owner of the land and to the county auditor. The owner may appeal this new valuation in the same manner as an assessment appeal. The application for an appeal shall be filed with the clerk no later than 60 days after the date of the mailing of the notice certifying the new valuation. Except when under an appeal, after the certification the auditor shall, in cases of immediate rezoning, within 10 days compute the tax recoupment fee and certify the amount to the tax collector. The tax collector shall notify the owner in writing of the amount and due date of the fee. Fees shall be due 60 days after mailing of notification.

(b) The tax recoupment fee shall apply only in cases of immediate rezoning and shall be a multiple of the difference between the amount of the tax last levied against the property when zoned as timberland production and the amount equal to the assessed valuation of the rezoned property times the tax rate of the current levy for the tax rate area, that multiple to be chosen from the following table according to subdivision (c):

Year	Multiple
1	1.06000
2	2.18360

3	3.37462
4	4.63709
5	5.97332
6	7.39384
7	8.89747
8	10.49132
9	12.18080
10	13.97164

(c) The multiple shall correspond to the number of years or fraction thereof, but in no event greater than 10, for which the land was zoned as timberland production or was subject to a contract under Chapter 7 (commencing with Section 51200).

(d) Tax recoupment fees imposed pursuant to this section shall be due and payable to the county in which the rezoning has taken place.

(e) In cases of immediate rezoning, an owner may submit a written application, requesting the waiver of tax recoupment fees and explaining the reasons therefor, to either the State Board of Equalization or, where the county board of supervisors has adopted an authorizing resolution, to the county board of supervisors. The board receiving an application pursuant to this subdivision may, if it determines that it is in the public interest, waive all or any portion of the fees.

SEC. 2. Section 75.11 of the Revenue and Taxation Code is amended to read:

75.11. (a) If the change in ownership occurs or the new construction is completed on or after January 1 but on or before May 31, then there shall be two supplemental assessments placed on the supplemental roll. The first supplemental assessment shall be the difference between the new base year value and the taxable value on the current roll. In the case of a change in ownership of the full interest in the real property, the second supplemental assessment shall be the difference between the new base year value and the taxable value to be enrolled on the roll being prepared. If the change in ownership is of only a partial interest in the real property, the second supplemental assessment shall be the difference between the sum of the new base year value of the portion transferred plus the taxable value on the roll being prepared of the remainder of the property and the taxable value on the roll being prepared of the whole property. For new construction, the second supplemental assessment shall be the value change due to the new construction.

(b) If the change in ownership occurs or the new construction is completed on or after June 1 but before the succeeding January 1, then the supplemental assessment placed on the supplemental roll shall be the

difference between the new base year value and the taxable value on the current roll.

(c) If there are multiple changes in ownership or multiple completions of new construction, or both, with respect to the same real property during the same assessment year, then there shall be a net supplemental assessment placed on the supplemental roll, in addition to the assessment pursuant to subdivision (a) or (b). The net supplemental assessment shall be the most recent new base year value less the sum of (1) the previous entry or entries placed on the supplemental roll computed pursuant to subdivision (a) or (b), and (2) the corresponding taxable value on the current roll or the taxable value to be entered on the roll being prepared, or both, depending on the date or dates the change of ownership occurs or new construction is completed as specified in subdivisions (a) and (b).

(d) No supplemental assessment authorized by this section shall be valid, or have any force or effect, unless it is placed on the supplemental roll on or before the applicable date specified in paragraph (1), (2), or (3), as follows:

(1) The fourth July 1 following the July 1 of the assessment year in which the event giving rise to the supplemental assessment occurred.

(2) The eighth July 1 following the July 1 of the assessment year in which the event giving rise to the supplemental assessment occurred, if the penalty provided for in Section 504 is added to the assessment.

(3) The eighth July 1 following the July 1 of the assessment year in which the event giving rise to the supplemental assessment occurred, if the change in ownership or change in control was unrecorded and a change in ownership statement required by Section 480 or preliminary change in ownership report, as required by Section 480.3, was not timely filed.

(4) Notwithstanding paragraphs (1), (2), and (3), there shall be no limitations period on making a supplemental assessment, if the penalty provided for in Section 503 is added to the assessment.

For the purposes of this subdivision, ''assessment year'' means the period beginning annually as of 12:01 a.m. on the first day of January and ending immediately prior to the succeeding first day of January.

(e) If, before the expiration of the applicable period specified in subdivision (d) for making a supplemental assessment, the taxpayer and the assessor agree in writing to extend the period for making a supplemental assessment, correction, or claim for refund, a supplemental assessment may be made at any time prior to the expiration of that extended period. The extended period may be further extended by successive written agreements entered into prior to the expiration of the most recent extension.

SEC. 3. Section 170 of the Revenue and Taxation Code is amended to read:

170. (a) Notwithstanding any provision of law to the contrary, the board of supervisors may, by ordinance, provide that every assessee of any taxable property, or any person liable for the taxes thereon, whose property was damaged or destroyed without his or her fault, may apply for reassessment of that property as provided herein. The ordinance may also specify that the assessor may initiate the reassessment where the assessor determines that within the preceding 12 months taxable property located in the county was damaged or destroyed.

To be eligible for reassessment the damage or destruction to the property shall have been caused by any of the following:

(1) A major misfortune or calamity, in an area or region subsequently proclaimed by the Governor to be in a state of disaster, if that property was damaged or destroyed by the major misfortune or calamity that caused the Governor to proclaim the area or region to be in a state of disaster. As used in this paragraph, ''damage'' includes a diminution in the value of property as a result of restricted access to the property where that restricted access was caused by the major misfortune or calamity.

(2) A misfortune or calamity.

(3) A misfortune or calamity that, with respect to a possessory interest in land owned by the state or federal government, has caused the permit or other right to enter upon the land to be suspended or restricted. As used in this paragraph, ''misfortune or calamity'' includes a drought condition such as existed in this state in 1976 and 1977.

The application for reassessment may be filed within the time specified in the ordinance or within 12 months of the misfortune or calamity, whichever is later, by delivering to the assessor a written application requesting reassessment showing the condition and value, if any, of the property immediately after the damage or destruction, and the dollar amount of the damage. The application shall be executed under penalty of perjury, or if executed outside the State of California, verified by affidavit.

An ordinance may be made applicable to a major misfortune or calamity specified in paragraph (1) or to any misfortune or calamity specified in paragraph (2), or to both, as the board of supervisors determines. An ordinance may not be made applicable to a misfortune or calamity specified in paragraph (3), unless an ordinance making paragraph (2) applicable is operative in the county. The ordinance may specify a period of time within which the ordinance shall be effective, and, if no period of time is specified, it shall remain in effect until repealed.

(b) Upon receiving a proper application, the assessor shall appraise the property and determine separately the full cash value of land,

improvements and personalty immediately before and after the damage or destruction. If the sum of the full cash values of the land, improvements and personalty before the damage or destruction exceeds the sum of the values after the damage by ten thousand dollars ($10,000) or more, the assessor shall also separately determine the percentage reductions in value of land, improvements and personalty due to the damage or destruction. The assessor shall reduce the values appearing on the assessment roll by the percentages of damage or destruction computed pursuant to this subdivision, and the taxes due on the property shall be adjusted as provided in subdivision (e). However, the amount of the reduction shall not exceed the actual loss.

(c) The assessor shall notify the applicant in writing of the amount of the proposed reassessment. The notice shall state that the applicant may appeal the proposed reassessment to the local board of equalization within six months of the date of mailing the notice. If an appeal is requested within the six-month period, the board shall hear and decide the matter as if the proposed reassessment had been entered on the roll as an assessment made outside the regular assessment period. The decision of the board regarding the damaged value of the property shall be final, provided that a decision of the local board of equalization regarding any reassessment made pursuant to this section shall create no presumption as regards the value of the affected property subsequent to the date of the damage.

Those reassessed values resulting from reductions in full cash value of amounts, as determined above, shall be forwarded to the auditor by the assessor or the clerk of the local equalization board, as the case may be. The auditor shall enter the reassessed values on the roll. After being entered on the roll, those reassessed values shall not be subject to review, except by a court of competent jurisdiction.

(d) (1) If no application is made and the assessor determines that within the preceding 12 months a property has suffered damage caused by misfortune or calamity that may qualify the property owner for relief under an ordinance adopted under this section, the assessor shall provide the last known owner of the property with an application for reassessment. The property owner shall file the completed application within 60 days of the date of mailing on notification by the assessor but in no case more than 12 months after the occurrence of said damage. Upon receipt of a properly completed, timely filed application, the property shall be reassessed in the same manner as required in subdivision (b).

(2) This subdivision does not apply where the assessor initiated reassessment as provided in subdivision (a) or (*l*).

(e) The tax rate fixed for property on the roll on which the property so reassessed appeared at the time of the misfortune or calamity, shall be

applied to the amount of the reassessment as determined in accordance with this section and the assessee shall be liable for: (1) a prorated portion of the taxes that would have been due on the property for the current fiscal year had the misfortune or calamity not occurred, to be determined on the basis of the number of months in the current fiscal year prior to the misfortune or calamity; plus, (2) a proration of the tax due on the property as reassessed in its damaged or destroyed condition, to be determined on the basis of the number of months in the fiscal year after the damage or destruction, including the month in which the damage was incurred. For purposes of applying the preceding calculation in prorating supplemental taxes, the term ''fiscal year'' means that portion of the tax year used to determine the adjusted amount of taxes due pursuant to subdivision (b) of Section 75.41. If the damage or destruction occurred after January 1 and before the beginning of the next fiscal year, the reassessment shall be utilized to determine the tax liability for the next fiscal year. However, if the property is fully restored during the next fiscal year, taxes due for that year shall be prorated based on the number of months in the year before and after the completion of restoration.

(f) Any tax paid in excess of the total tax due shall be refunded to the taxpayer pursuant to Chapter 5 (commencing with Section 5096) of Part 9, as an erroneously collected tax or by order of the board of supervisors without the necessity of a claim being filed pursuant to Chapter 5.

(g) The assessed value of the property in its damaged condition, as determined pursuant to subdivision (b) compounded annually by the inflation factor specified in subdivision (a) of Section 51, shall be the taxable value of the property until it is restored, repaired, reconstructed or other provisions of the law require the establishment of a new base year value.

If partial reconstruction, restoration, or repair has occurred on any subsequent lien date, the taxable value shall be increased by an amount determined by multiplying the difference between its factored base year value immediately before the calamity and its assessed value in its damaged condition by the percentage of the repair, reconstruction, or restoration completed on that lien date.

(h) (1) When the property is fully repaired, restored, or reconstructed, the assessor shall make an additional assessment or assessments in accordance with subparagraph (A) or (B) upon completion of the repair, restoration, or reconstruction:

(A) If the completion of the repair, restoration, or reconstruction occurs on or after January 1, but on or before May 31, then there shall be two additional assessments. The first additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll. The second additional

assessment shall be the difference between the new taxable value as of the date of completion and the taxable value to be enrolled on the roll being prepared.

(B) If the completion of the repair, restoration, or reconstruction occurs on or after June 1, but before the succeeding January 1, then the additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll.

(2) On the lien date following completion of the repair, restoration, or reconstruction, the assessor shall enroll the new taxable value of the property as of that lien date.

(3) For purposes of this subdivision, ''new taxable value'' shall mean the lesser of the property's (A) full cash value, or (B) factored base year value or its factored base year value as adjusted pursuant to subdivision (c) of Section 70.

(i) The assessor may apply Chapter 3.5 (commencing with Section 75) of Part 0.5 in implementing this section, to the extent that chapter is consistent with this section.

(j) This section applies to all counties, whether operating under a charter or under the general laws of this state.

(k) Any ordinance in effect pursuant to Section 155.1, 155.13, or 155.14 shall remain in effect according to its terms as if that ordinance was adopted pursuant to this section, subject to the limitations of subdivision (b).

(*l*) When the assessor does not have the general authority pursuant to subdivision (a) to initiate reassessments, if no application is made and the assessor determines that within the preceding 12 months a property has suffered damage caused by misfortune or calamity, that may qualify the property owner for relief under an ordinance adopted under this section, the assessor may, with the approval of the board of supervisors, reassess the particular property for which approval was granted as provided in subdivision (b) and notify the last known owner of the property of the reassessment.

SEC. 4. Section 205.5 of the Revenue and Taxation Code is amended to read:

205.5. (a) Property that is owned by, and that constitutes the principal place of residence of, a veteran is exempted from taxation on that part of the full value of the residence that does not exceed one hundred thousand dollars ($100,000), if the veteran is blind in both eyes, has lost the use of two or more limbs, or if the veteran is totally disabled as a result of injury or disease incurred in military service. The one-hundred-thousand-dollar ($100,000) exemption shall be one hundred fifty thousand dollars ($150,000), in the case of an eligible veteran whose household income does not exceed the amount of forty

thousand dollars ($40,000), as adjusted for the relevant assessment year as provided in subdivision (g).

(b) For purposes of this section, ''veteran'' means either of the following:

(1) A veteran as specified in subdivision (o) of Section 3 of Article XIII of the Constitution without regard to any limitation contained therein on the value of property owned by the veteran or the veteran's spouse.

(2) Any person who would qualify as a veteran pursuant to paragraph (1) except that he or she has, as a result of a service-connected injury or disease died while on active duty in military service. The United States Department of Veterans Affairs shall determine whether an injury or disease is service connected.

(c) (1) Property that is owned by, and that constitutes the principal place of residence of, the unmarried surviving spouse of a veteran is exempt from taxation on that part of the full value of the residence that does not exceed one hundred thousand dollars ($100,000), in the case of a veteran who was blind in both eyes, had lost the use of two or more limbs, or was totally disabled provided that either of the following conditions is met:

(A) The deceased veteran during his or her lifetime qualified in all respects for the exemption or would have qualified for the exemption under the laws effective on January 1, 1977, except that the veteran died prior to January 1, 1977.

(B) The veteran died from a disease that was service connected as determined by the United States Department of Veterans Affairs.

The one-hundred-thousand-dollar ($100,000) exemption shall be one hundred fifty thousand dollars ($150,000), in the case of an eligible unmarried surviving spouse whose household income does not exceed the amount of forty thousand dollars ($40,000), as adjusted for the relevant assessment year as provided in subdivision (g).

(2) Commencing with the 1994–95 fiscal year, property that is owned by, and that constitutes the principal place of residence of, the unmarried surviving spouse of a veteran as described in paragraph (2) of subdivision (b) is exempt from taxation on that part of the full value of the residence that does not exceed one hundred thousand dollars ($100,000). The one-hundred-thousand-dollar ($100,000) exemption shall be one hundred fifty thousand dollars ($150,000), in the case of an eligible unmarried surviving spouse whose household income does not exceed the amount of forty thousand dollars ($40,000), as adjusted for the relevant assessment year as provided in subdivision (g).

(d) As used in this section, ''property that is owned by a veteran'' or ''property that is owned by the veteran's unmarried surviving spouse'' includes all of the following:

(1) Property owned by the veteran with the veteran's spouse as a joint tenancy, tenancy in common, or as community property.

(2) Property owned by the veteran or the veteran's spouse as separate property.

(3) Property owned with one or more other persons to the extent of the interest owned by the veteran, the veteran's spouse, or both the veteran and the veteran's spouse.

(4) Property owned by the veteran's unmarried surviving spouse with one or more other persons to the extent of the interest owned by the veteran's unmarried surviving spouse.

(5) So much of the property of a corporation as constitutes the principal place of residence of a veteran or a veteran's unmarried surviving spouse when the veteran, or the veteran's spouse, or the veteran's unmarried surviving spouse is a shareholder of the corporation and the rights of shareholding entitle one to the possession of property, legal title to which is owned by the corporation. The exemption provided by this paragraph shall be shown on the local roll and shall reduce the full value of the corporate property. Notwithstanding any provision of law or articles of incorporation or bylaws of a corporation described in this paragraph, any reduction of property taxes paid by the corporation shall reflect an equal reduction in any charges by the corporation to the person who, by reason of qualifying for the exemption, made possible the reduction for the corporation.

(e) For purposes of this section, being blind in both eyes means having a visual acuity of 5/200 or less, or concentric contraction of the visual field to 5 degrees or less; losing the use of a limb means that the limb has been amputated or its use has been lost by reason of ankylosis, progressive muscular dystrophies, or paralysis; and being totally disabled means that the United States Department of Veterans Affairs or the military service from which the veteran was discharged has rated the disability at 100 percent or has rated the disability compensation at 100 percent by reason of being unable to secure or follow a substantially gainful occupation.

(f) An exemption granted to a claimant in accordance with the provisions of this section shall be in lieu of the veteran's exemption provided by subdivisions (o), (p), (q), and (r) of Section 3 of Article XIII of the Constitution and any other real property tax exemption to which the claimant may be entitled. No other real property tax exemption may be granted to any other person with respect to the same residence for which an exemption has been granted under the provisions of this section; provided, that if two or more veterans qualified pursuant to this section coown a property in which they reside, each is entitled to the exemption to the extent of his or her interest.

(g) Commencing on January 1, 2002, and for each assessment year thereafter, the household income limit shall be compounded annually by an inflation factor that is the annual percentage change, measured from February to February of the two previous assessment years, rounded to the nearest one-thousandth of 1 percent, in the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations.

SEC. 5. Section 830 of the Revenue and Taxation Code is amended to read:

830. (a) If the request of the board is mailed before the lien date as defined in Section 722, the property statement shall be filed with the board by March 1, and shall be in such detail as the board may prescribe.

(b) If the request of the board is mailed on or after the first day of January following the lien date, the property statement shall be filed with the board within 60 days after the request is mailed.

(c) Except as hereinafter provided, if any person fails to file the property statement, in whole or in part, by March 1, or by that later date to which the filing period is extended pursuant to subdivision (b) or Section 830.1, a penalty shall be added to the full value of the assessment of so much of the property as is not timely reported as follows:

(1) For any part of the property statement relating to the development of the unit value of operating property, the penalty shall be 10 percent of the unit value.

(2) For any part of the property statement, not relating to the development of the unit value of operating property, that lists or describes specific operating property, the penalty shall be 10 percent of the allocated value of the property, which penalty shall be added to the unit value.

(3) For any part of the property statement that lists or describes specific nonunitary property, the penalty shall be 10 percent of the value of the property.

(4) If the failure to timely file a property statement is due to a fraudulent or willful attempt to evade the tax, a penalty of 25 percent of the assessed value of the estimated assessment shall be added to the assessment. A willful failure to file a property statement as required by Article 5 (commencing with Section 826) shall be deemed to be a willful attempt to evade the tax.

(5) No penalty added pursuant to paragraph (1), (2), (3), or (4) may exceed twenty million dollars ($20,000,000) of full value. In addition, if a penalty has been added pursuant to paragraph (1), (2), or (3), if a claim for refund seeking the recovery of that penalty has been filed by the state assessee contesting the penalty within three months of the due date of the second installment, and the state assessee initiates an action in the superior court within one year of the filing of the claim for refund,

the state assessee is not subject to any further penalties on subsequent assessments for failure to comply with any subsequent request seeking information or data with respect to the same issue as set forth in the claim for refund filed within the time limits set forth above, until the assessment year after a final decision of the court, and then only with respect to a failure to comply with a request for information with respect to assessments after a final decision of the court. For purposes of this paragraph, ''same issue'' means the type of information that is the subject of the disputed request for information.

(d) Any person who subscribes to the board's tax rate area change service and who receives a change mailed between April 1 and May 1, shall file a corrected statement no later than May 30 with respect to those parts of the property statement that are affected by the change.

If that person receives a change mailed after May 1, a corrected statement shall be filed no later than the 60th day following the mailing of that change.

(e) Penalties incurred for filings received after June 30 may be included with the assessments for the succeeding fiscal year.

(f) If the assessee establishes to the satisfaction of the board that the failure to file the property statement or any of its parts within the time required by this section was due to reasonable cause and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the board shall order the penalty abated, provided the assessee has filed with the board written application for abatement of the penalty within the time prescribed by law for the filing of applications for assessment reductions.

SEC. 6. Section 830.1 of the Revenue and Taxation Code is amended to read:

830.1. Notwithstanding Section 15620 of the Government Code, the board, by order entered upon its minutes and for good cause shown, may extend the time fixed for filing portions of the property statement as follows:

(a) For any part of the property statement relating to the development of the unit value of operating property, an extension not exceeding 45 days may be granted.

(b) For any part of the property statement, not relating to the development of the unit value of operating property, that lists or describes specific operating property, an extension not exceeding 30 days may be granted.

(c) For any part of the property statement that lists or describes specific nonunitary property, an extension not exceeding 30 days may be granted.

(d) If an extension is granted pursuant to subdivision (a), (b), or (c), an additional 15-day extension may be granted upon the showing of

extraordinary circumstances which prevent the filing of the statement within the first extension.

SEC. 6.5. Section 833 of the Revenue and Taxation Code is amended to read:

833. (a) Except as provided herein, all information required by the board or furnished in the property statement shall be held secret by the board and by any person or entity acquiring this information pursuant to subdivision (c). Information and records in the board's office which are not required to be kept or prepared by the board are not public documents and are not open to public inspection.

(b) This section shall not apply to maps filed pursuant to Section 326.

(c) Except as provided in Section 38706, the board may provide any assessment data in its possession to the assessor of any county. When requested by resolution of the board of supervisors of any county, or the city council of any city which prepares its own local roll, the board shall permit the auditor or the assessor of the county or city, or any duly authorized deputy or employee of that officer, to examine any and all records of the board.

(d) The board shall disclose information, furnish abstracts or permit access to any and all of its records to or by law enforcement agencies, grand juries, and other duly authorized legislative or administrative officials of the state pursuant to their authorization to examine these records.

(e) The board also may disclose information, records, and appraisal data relating to state assessment of companies engaged in interstate commerce to tax officials of other states having duties corresponding to those described by this chapter. This disclosure shall be limited to instances in which there is a reciprocal exchange of information by the states in which the interstate companies operate, and shall be made only pursuant to a written agreement between the agencies involved. This agreement shall provide that any request for information be in writing, shall specify the information to be exchanged, and shall require that any information furnished be used solely for tax administration purposes and otherwise shall be held secret. This agreement shall also provide that any information furnished be disclosed only to those persons whose duties or responsibilities require access and shall require that necessary safeguards be implemented to protect the confidentiality of the information. The request for information and any written material furnished pursuant to the request shall be open to inspection by the person to whom the information relates at the office of the board in Sacramento.

(f) Upon receiving any request for confidential information from any person or entity described in subdivision (c) or (e), the board shall promptly notify the state assessee to which the request relates of the

identity of the person or entity requesting the information and a description of the information sought. Upon sending any information in response to the request, the board shall simultaneously provide to the state assessee to which the request relates notification describing the information so transmitted and the identity of the person or entity to whom the information was transmitted.

SEC. 7. Section 1606 of the Revenue and Taxation Code is amended to read:

1606. (a) (1) Any applicant for a change of an assessment on the local roll or the assessor, in those cases where the assessed value of the property involved, as shown on the current assessment roll, exceeds one hundred thousand dollars ($100,000) without regard to any exemptions, may initiate an exchange of information with the other party by submitting the following data to the other party and the clerk in writing:

(A) Information stating the basis of the party's opinion of value.

(B) When the opinion of value is to be supported with evidence of comparable sales, information identifying the properties with sufficient certainty such as by assessor parcel number, street address or legal description of the property, the approximate date of sale, the applicable zoning, the price paid, and the terms of the sale, if known.

(C) When the opinion of value is to be supported with evidence based on an income study, information relating to income, expenses and the capitalization method.

(D) When the opinion of value is to be supported with evidence of replacement costs, information relating to date of construction, type of construction, replacement cost of construction, obsolescence, allowance for extraordinary use of machinery and equipment, and depreciation allowances.

(2) To initiate an exchange of information, the initiating party shall submit the data required by paragraph (1) at least 30 days before the commencement of the hearing on the application. For purposes of determining the date upon which the exchange was deemed initiated, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope or package containing the information shall control.

(b) (1) Notwithstanding any limitation on assessed value contained in subdivision (a), if the initiating party has submitted the data required by subdivision (a) within the specified time, the other party shall submit to the initiating party and the clerk the following data:

(A) Information stating the basis of the other party's opinion of value.

(B) When the opinion of value is to be supported with evidence of comparable sales, information identifying the properties with sufficient certainty such as by assessor parcel number, street address or legal

description of the property, the approximate date of sale, the applicable zoning, the price paid, and the terms of the sale, if known.

(C) When the opinion of value is to be supported with evidence based on an income study, information relating to income, expenses and the capitalization method.

(D) When the opinion of value is to be supported with evidence of replacement cost, information relating to date of construction, type of construction, replacement cost of construction, obsolescence, allowance for extraordinary use of machinery and equipment, and depreciation allowance.

(2) The other party shall submit the data required by this subdivision at least 15 days prior to the hearing. For purposes of determining the date upon which the other party responded to the exchange, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope or package containing the information shall control.

(c) (1) The person assigning a hearing date shall provide adequate notice to the parties of the date, so that the exchange of information permitted by this section can be made without requiring a continuance of the hearing.

(2) The initiating party and the other party shall use adequate methods of submission to ensure to the best of their ability that the exchange of information process is completed at least 10 days prior to the hearing.

(d) Whenever information has been exchanged pursuant to this section the parties may not introduce evidence on matters not so exchanged unless the other party consents to the introduction. However, at the hearing, each party may introduce new material relating to the information received from the other party. If a party introduces new material at the hearing, the other party, upon his or her request, shall be granted a continuance for a reasonable period of time.

(e) Nothing in this section may be construed as an intent of the Legislature to change, alter or modify generally acceptable methods of using the sales approach, income approach, or replacement cost approach to determine full cash value.

SEC. 8. Section 5814 of the Revenue and Taxation Code is amended to read:

5814. (a) For purposes of this part, ''change in ownership'' and ''purchase'' shall have the same meanings as provided in Sections 60 to 68, inclusive, to the extent applicable. The operative dates of those sections shall be controlling in the determination of whether a change in ownership or purchase of a manufactured home has occurred.

(b) As used in Sections 60 to 68, inclusive, the term ''real property'' includes a manufactured home that is subject to tax under this part.

SEC. 8.5. Section 11273 of the Revenue and Taxation Code is amended to read:

11273. If any person required to file a report fails to file it on or before April 30 or such time as extended by the board, a penalty of 10 percent of the assessed value shall be added to the assessment.

If the assessee establishes to the satisfaction of the board that the failure to file the property statement timely was due to a reasonable cause and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the board shall order the penalty abated, provided the assessee has filed with the board written application for abatement of the penalty within the time prescribed by law for filing a petition for reassessment.

SEC. 9. Section 11338 of the Revenue and Taxation Code is amended to read:

11338. (a) The owner or assessee may file a petition for reassessment on or before September 20. If the petition is not filed on or before September 20, or, if the period is extended by the board, by October 5, the assessment of the board shall be final.

(b) The board may extend the period for filing a petition until October 5 provided a written request for the extension is filed with the board on or before September 20.

(c) The board shall hear the applicant on such petition on or before January 31.

SEC. 10. Section 11339 of the Revenue and Taxation Code is amended to read:

11339. (a) Any assessment made outside of the regular assessment period may be the subject of a petition for reassessment. A petition for reassessment may be filed on or before the 50th day following the date of the notice of assessment.

(b) The board may extend the deadline for filing a petition for a period not to exceed 15 days, provided a written request for the extension is filed with the board on or before the expiration of the period for which the extension may be granted.

(c) If a petition for reassessment is not timely filed, the assessment of the board shall be final. The board may consider a petition which is not timely filed to be a claim for refund.

(d) The board shall hear the applicant on the petition within 90 days of the date on which the petition was filed.

SEC. 11. The Legislature finds and declares that the amendments made by this act to Sections 830 and 830.1 of the Revenue and Taxation Code are declaratory of existing law.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school

districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 408

An act to add Section 1161 to the Labor Code, relating to the agricultural employee relief fund, and making an appropriation therefor.

[Approved by Governor September 29, 2001. Filed with Secretary of State October 1, 2001.]

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

SECTION 1. Section 1161 is added to the Labor Code, to read:

1161. (a) The Agricultural Employee Relief Fund is hereby created as a special fund in the State Treasury and is continuously appropriated to the Agricultural Labor Relations Board for the purposes specified in subdivision (c). The board shall act as a trustee of all moneys deposited in the fund.

(b) Any monetary relief ordered by the board pursuant to this part to be paid by an employer to an employee shall be collected by the board on behalf of the employee. All monetary relief so collected by the board shall be remitted to the employee for whom the board collected the money.

(c) (1) Notwithstanding Section 1519 of the Code of Civil Procedure, if the board has made a diligent effort to locate an employee on whose behalf the board has collected monetary relief pursuant to this part, and is unable to locate the employee or the lawful representative of the employee for a period of two years after the date the board collected the monetary relief, the board shall deposit those moneys in the fund.

(2) Moneys in the fund shall be used by the board to pay employees the unpaid balance of any monetary relief ordered by the board to be paid by an employer to an employee. Prior to making any payment from the fund, the board first shall make a finding that, in an individual case, the collection of the full amount of the monetary relief ordered is not possible after reasonable efforts have been made to collect the balance from the employer.

(d) As used in this section, ''fund'' means the Agricultural Employee Relief Fund.

(e) Not later than July 1, 2002, the board shall report to the Legislature on the status of the fund.

CHAPTER 409

An act to amend Sections 1222, 1275, 1280, and 1327 of, to add Section 1265.1 to, and to repeal and add Section 1253.8 of, the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 1222 of the Unemployment Insurance Code is amended to read:

1222. Within 30 days of service of any notice of assessment or denial of claim for refund or credit under Sections 803, 821, 844, or 991, or of any notice under Sections 704.1, 1035, 1055, 1127.5, 1131, 1142, 1143, 1144, 1180, 1184, 1327, 1733, and 1735, any employing unit or other person given the notice, or any employing unit affected by a granting or denial of a transfer of reserve account, may file a petition for review or reassessment with an administrative law judge. The administrative law judge may for good cause grant an additional 30 days for the filing of a petition. If a petition for reassessment is not filed within the 30-day period, or within the additional period granted by the administrative law judge, an assessment is final at the expiration of the period. If a petition for review of a termination of elective coverage under Section 704.1 is not filed within the 30-day period, or within the additional period granted by the administrative law judge, the termination is final at the expiration of the period. If the director fails to serve notice of his or her action within 60 days after a claim for refund or credit is filed, the person or employing unit may consider the claim denied and file a petition with an administrative law judge.

SEC. 2. Section 1253.8 of the Unemployment Insurance Code is repealed.

SEC. 3. Section 1253.8 is added to the Unemployment Insurance Code, to read:

1253.8. An unemployed individual shall not be disqualified for eligibility for unemployment compensation benefits solely on the basis that he or she is only available for part-time work. If an individual restricts his or her availability to part-time work, he or she may be

considered to be able to work and available for work pursuant to subdivision (c) of Section 1253 if it is determined that all of following conditions exist:

(a) The claim is based on the part-time employment.

(b) The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the wage credits were accrued.

(c) The claimant imposes no other restrictions and is in a labor market in which a reasonable demand exists for the part-time services he or she offers.

SEC. 4. Section 1265.1 is added to the Unemployment Insurance Code, to read:

1265.1. Notwithstanding any other provision of this division, payments to an individual by an employer who has failed to provide the advance notice of facility closure required by the federal Worker Adjustment Renotification and Training (WARN) Act (29 U.S.C. Sec. 1201 et seq.) shall not be construed to be wages or compensation for personal services under this division, and benefits payable under this division shall not be denied or reduced because of the receipt of payments related in any way to an employer's violation of the WARN Act.

SEC. 5. Section 1275 of the Unemployment Insurance Code is amended to read:

1275. Unemployment compensation benefit award computations shall be based on wages paid in the base period. ''Base period'' means: for benefit years beginning in October, November, or December, the four calendar quarters ended in the next preceding month of June; for benefit years beginning in January, February, or March, the four calendar quarters ended in the next preceding month of September; for benefit years beginning in April, May, or June, the four calendar quarters ended in the next preceding month of December; for benefit years beginning in July, August, or September, the four calendar quarters ended with the next preceding month of March. Wages used in the determination of benefits payable to an individual during any benefit year may not be used in determining that individual's benefits in any subsequent benefit year.

SEC. 6. Section 1280 of the Unemployment Insurance Code is amended to read:

1280. (a) For any new claims filed with an effective date on or after January 1, 1992, and prior to January 1, 2002, an individual's weekly benefit amount is the amount appearing in column B in the following table opposite that wage bracket in column A that contains the amount of wages paid to the individual for employment by employers during the quarter of his or her base period in which his or her wages were the highest.

A Amount of wages in highest quarter	B Weekly benefit amount
$900.00– 948.99	40
949.00– 974.99	41
975.00–1,000.99	42
1,001.00–1,026.99	43
1,027.00–1,052.99	44
1,053.00–1,078.99	45
1,079.00–1,117.99	46
1,118.00–1,143.99	47
1,144.00–1,169.99	48
1,170.00–1,195.99	49
1,196.00–1,221.99	50
1,222.00–1,247.99	51
1,248.00–1,286.99	52
1,287.00–1,312.99	53
1,313.00–1,338.99	54
1,339.00–1,364.99	55
1,365.00–1,403.99	56
1,404.00–1,429.99	57
1,430.00–1,455.99	58
1,456.00–1,494.99	59
1,495.00–1,520.99	60
1,521.00–1,546.99	61
1,547.00–1,585.99	62
1,586.00–1,611.99	63
1,612.00–1,637.99	64
1,638.00–1,676.99	65
1,677.00–1,702.99	66
1,703.00–1,741.99	67
1,742.00–1,767.99	68
1,768.00–1,806.99	69
1,807.00–1,832.99	70
1,833.00–1,871.99	71
1,872.00–1,897.99	72
1,898.00–1,936.99	73
1,937.00–1,975.99	74
1,976.00–2,001.99	75
2,002.00–2,040.99	76
2,041.00–2,066.99	77

2,067.00–2,105.99	78
2,106.00–2,144.99	79
2,145.00–2,170.99	80
2,171.00–2,209.99	81
2,210.00–2,248.99	82
2,249.00–2,287.99	83
2,288.00–2,326.99	84
2,327.00–2,352.99	85
2,353.00–2,391.99	86
2,392.00–2,430.99	87
2,431.00–2,469.99	88
2,470.00–2,508.99	89
2,509.00–2,547.99	90
2,548.00–2,586.99	91
2,587.00–2,625.99	92
2,626.00–2,664.99	93
2,665.00–2,703.99	94
2,704.00–2,742.99	95
2,743.00–2,781.99	96
2,782.00–2,820.99	97
2,821.00–2,859.99	98
2,860.00–2,898.99	99
2,899.00–2,937.99	100
2,938.00–2,989.99	101
2,990.00–3,028.99	102
3,029.00–3,067.99	103
3,068.00–3,106.99	104
3,107.00–3,158.99	105
3,159.00–3,197.99	106
3,198.00–3,236.99	107
3,237.00–3,288.99	108
3,289.00–3,327.99	109
3,328.00–3,379.99	110
3,380.00–3,418.99	111
3,419.00–3,470.99	112
3,471.00–3,509.99	113
3,510.00–3,561.99	114
3,562.00–3,600.99	115
3,601.00–3,652.99	116
3,653.00–3,704.99	117

3,705.00–3,743.99	118
3,744.00–3,795.99	119
3,796.00–3,847.99	120
3,848.00–3,899.99	121
3,900.00–3,938.99	122
3,939.00–3,990.99	123
3,991.00–4,042.99	124
4,043.00–4,079.99	125
4,080.00–4,116.99	126
4,117.00–4,153.99	127
4,154.00–4,190.99	128
4,191.00–4,227.99	129
4,228.00–4,264.99	130
4,265.00–4,301.99	131
4,302.00–4,338.99	132
4,339.00–4,375.99	133
4,376.00–4,412.99	134
4,413.00–4,449.99	135
4,450.00–4,486.99	136
4,487.00–4,523.99	137
4,524.00–4,560.99	138
4,561.00–4,597.99	139
4,598.00–4,634.99	140
4,635.00–4,671.99	141
4,672.00–4,708.99	142
4,709.00–4,745.99	143
4,746.00–4,782.99	144
4,783.00–4,819.99	145
4,820.00–4,856.99	146
4,857.00–4,893.99	147
4,894.00–4,930.99	148
4,931.00–4,966.99	149

If the amount of wages paid an individual for employment by employers exceeds four thousand nine hundred sixty-six dollars and ninety-nine cents ($4,966.99) in the quarter of his or her base period in which these wages were highest, the individual's weekly benefit amount shall be 39 percent of these wages divided by 13, but in no case shall this amount exceed two hundred thirty dollars ($230). If the benefit payable under this subdivision is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

(b) For new claims filed with an effective date beginning on or after January 1, 2002 and prior to January 1, 2003, an individual's weekly benefit amount is the amount appearing in column B in the following table opposite that wage bracket in column A that contains the amount of wages paid to the individual for employment by employers during the quarter of his or her base period in which his or her wages were the highest.

A Amount of wages in highest quarter	B Weekly benefit amount
$900.00– 948.99	40
949.00– 974.99	41
975.00–1,000.99	42
1,001.00–1,026.99	43
1,027.00–1,052.99	44
1,053.00–1,078.99	45
1,079.00–1,117.99	46
1,118.00–1,143.99	47
1,144.00–1,169.99	48
1,170.00–1,195.99	49
1,196.00–1,221.99	50
1,222.00–1,247.99	51
1,248.00–1,286.99	52
1,287.00–1,312.99	53
1,313.00–1,338.99	54
1,339.00–1,364.99	55
1,365.00–1,403.99	56
1,404.00–1,429.99	57
1,430.00–1,455.99	58
1,456.00–1,494.99	59
1,495.00–1,520.99	60
1,521.00–1,546.99	61
1,547.00–1,585.99	62
1,586.00–1,611.99	63
1,612.00–1,637.99	64
1,638.00–1,676.99	65
1,677.00–1,702.99	66
1,703.00–1,741.99	67
1,742.00–1,767.99	68
1,768.00–1,806.99	69

1,807.00–1,832.99	70
1,833.00–1,871.99	71
1,872.00–1,897.99	72
1,898.00–1,936.99	73
1,937.00–1,975.99	74
1,976.00–2,001.99	75
2,002.00–2,040.99	76
2,041.00–2,066.99	77
2,067.00–2,105.99	78
2,106.00–2,144.99	79
2,145.00–2,170.99	80
2,171.00–2,209.99	81
2,210.00–2,248.99	82
2,249.00–2,287.99	83
2,288.00–2,326.99	84
2,327.00–2,352.99	85
2,353.00–2,391.99	86
2,392.00–2,430.99	87
2,431.00–2,469.99	88
2,470.00–2,508.99	89
2,509.00–2,547.99	90
2,548.00–2,586.99	91
2,587.00–2,625.99	92
2,626.00–2,664.99	93
2,665.00–2,703.99	94
2,704.00–2,742.99	95
2,743.00–2,781.99	96

If the amount of wages paid an individual for employment by employers exceeds two thousand seven hundred eighty-one dollars and ninety-nine cents ($2,781.99) in the quarter of his or her base period in which these wages were highest, the individual's weekly benefit amount shall be 45 percent of these wages divided by 13, but in no case may this amount exceed three hundred thirty dollars ($330).

(c) For new claims filed with an effective date beginning on or after January 1, 2003, an individual's weekly benefit amount is the amount appearing in column B in the following table opposite the wage bracket in column A that contains the wages paid to the individual for employment by employers during the quarter of his or her base period in which his or her wages were the highest.

A Amount of wages in highest quarter	B Weekly benefit amount
$900.00– 948.99	40
949.00– 974.99	41
975.00–1,000.99	42
1,001.00–1,026.99	43
1,027.00–1,052.99	44
1,053.00–1,078.99	45
1,079.00–1,117.99	46
1,118.00–1,143.99	47
1,144.00–1,169.99	48
1,170.00–1,195.99	49
1,196.00–1,221.99	50
1,222.00–1,247.99	51
1,248.00–1,286.99	52
1,287.00–1,312.99	53
1,313.00–1,338.99	54
1,339.00–1,364.99	55
1,365.00–1,403.99	56
1,404.00–1,429.99	57
1,430.00–1,455.99	58
1,456.00–1,494.99	59
1,495.00–1,520.99	60
1,521.00–1,546.99	61
1,547.00–1,585.99	62
1,586.00–1,611.99	63
1,612.00–1,637.99	64
1,638.00–1,676.99	65
1,677.00–1,702.99	66
1,703.00–1,741.99	67
1,742.00–1,767.99	68
1,768.00–1,806.99	69
1,807.00–1,832.99	70

If the amount of wages paid an individual for employment by employers exceeds one thousand eight hundred thirty-two dollars and ninety-nine cents ($1,832.99) in the quarter of his or her base period in which these wages were highest, the individual's weekly benefit amount shall be 50 percent of these wages divided by 13, but in no case shall this amount exceed the applicable of the following:

(1) For new claims filed with an effective date beginning on or after January 1, 2003, and before January 1, 2004, three hundred seventy dollars ($370).

(2) For new claims filed with an effective date beginning on or after January 1, 2004, and before January 1, 2005, four hundred ten dollars ($410).

(3) For new claims filed with an effective date beginning on or after January 1, 2005, four hundred fifty dollars ($450).

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

SEC. 7. Section 1327 of the Unemployment Insurance Code is amended to read:

1327. The department shall give a notice of the filing of a new or additional claim to the employing unit by which the claimant was last employed immediately preceding the filing of the claim unless the additional claim is the result of the filing of a partial claim as defined by the department, there has not been a subsequent employing unit which is designated as the last employer, and there is no separation issue. The employing unit so notified shall submit within 10 days after the mailing of the notice any facts then known that may affect the claimant's eligibility for benefits, including, but not limited to, facts pertaining to eligibility under Section 1256. The 10-day period may be extended for good cause. If after the 10-day period the employing unit acquires knowledge of facts that may affect the eligibility of the claimant and facts could not reasonably have been known within the period, the employing unit shall, within 10 days of acquiring the knowledge, submit the facts to the department, and the 10-day period may also be extended for good cause.

SEC. 8. The Employment Development Department shall contract with a nonprofit, nonpartisan independent research organization with a proven record of conducting objective research on social insurance issues in the State of California to study the most effective and efficient means of capturing recent employee wages for the purposes of establishing eligibility for unemployment insurance benefits, including, but not limited to, implementing an alternative base period. The study shall also identify all available federal and state resources that may be utilized to administer the unemployment insurance program. The study shall be completed and submitted to the Legislature by December 31, 2002. The costs of the study shall be paid for from existing department funds.

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CHAPTER 410

An act to add Section 19164.1 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 19164.1 is added to the Revenue and Taxation Code, to read:

19164.1. (a) Any understatement determined pursuant to subdivision (a) of Section 19164 (relating to the accuracy-related penalty) may not include amounts that are attributable to the credit allowed under Section 17052.2 (relating to the teacher retention tax credit).

(b) This section applies only to tax credits claimed under Section 17052.2 for taxable years beginning on or after January 1, 2000, and before January 1, 2001.

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

CHAPTER 411

An act to add Section 19990.6 to the Government Code, relating to state employment.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 19990.6 is added to the Government Code, to read:

19990.6. (a) Service on a local appointed or elected governmental board, commission, committee, or other body or as a local elected official by an attorney employed by the state in a nonelected position or by an administrative law judge, as defined in Section 11475.10, shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to, the duties of the attorney or administrative law judge as a state officer or employee and shall not result in the automatic vacation of either office.

(b) Nothing in this section shall be construed to prohibit an administrative law judge, as defined in Section 11475.10, or an attorney employed by the state in a nonelected position from serving on any other appointed or elected governmental board, commission, committee, or other body, consistent with all applicable conflict-of-interest statutes and regulations and judicial canons of ethics.

CHAPTER 412

An act to amend Section 7118 of the Government Code, relating to economic development.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 7118 of the Government Code is amended to read:

7118. (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 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 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 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 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 certify under penalty of perjury to hire persons living within a local agency military base recovery area equal to 5 to 9 percent of its workforce 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 workforce 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 workforce 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 workforce 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 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, 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. 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.

CHAPTER 413

An act to amend Section 35401.7 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 35401.7 of the Vehicle Code is amended to read:

35401.7. (a) The limitations of access specified in subdivision (d) of Section 35401.5 do not apply to licensed carriers of livestock when those carriers are directly enroute to or from a point of loading or unloading of livestock on those portions of State Highway Route 101 located in the Counties of Del Norte, Humboldt, and Mendocino from its junction with State Highway Route 1 near Leggett north to the Oregon border, if the travel is necessary and incidental to the shipment of the livestock.

(b) The exemption allowed under this section does not apply unless all of the following conditions are met:

(1) The length of the truck tractor, in combination with the semitrailer used to transport the livestock, does not exceed a total of 70 feet.

(2) The distance from the kingpin to the rearmost axle of the semitrailer does not exceed 40 feet.

(c) The exemption allowed under this section does not apply to travel conducted on the day prior to, or on the day of, any federally recognized holiday.

(d) (1) The Department of the California Highway Patrol, in consultation with the Department of Transportation, shall conduct an initial study of the effect that the exemption provided under this section has on public safety. The findings of that study shall be reported to the Legislature on or before July 1, 2001.

(2) The Department of the California Highway Patrol, in consultation with the Department of Transportation, shall conduct a comprehensive study of the effect that the exemption provided under this section has on public safety during the entire effective period of the exemption, commencing on January 1, 1999. The findings of the study required under this paragraph shall be reported to the Legislature on or before May 1, 2003.

(e) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

CHAPTER 414

An act to add Sections 568.2 and 568.3 to the Code of Civil Procedure, and to amend Sections 17980.6 and 17980.7 of, and to add Chapter 6.1 (commencing with Section 50651) to Part 2 of Division 31 of, the Health and Safety Code, relating to housing.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 568.2 is added to the Code of Civil Procedure, to read:

568.2. (a) A receiver of real property containing rental housing shall notify the court of the existence of any order or notice to correct any substandard condition, as defined in Section 17920.3 of the Health and Safety Code, with which the receiver cannot comply within the time provided by the order or notice.

(b) The notice shall be filed within 30 days after the receiver's appointment or, if the substandard condition occurs subsequently, within 15 days of its occurrence.

(c) The notice shall inform the court of all of the following:

(1) The substandard conditions that exist.

(2) The threat or danger that the substandard conditions pose to any occupant of the property or the public.

(3) The approximate cost and time involved in abating the conditions. If more time is needed to approximate the cost, then the notice shall provide the date on which the approximate cost will be filed with the court and that date shall be within 10 days of the filing.

(4) Whether the receivership estate is likely to contain sufficient funds to abate the conditions.

(d) If the receivership estate does not contain sufficient funds to abate the conditions, the receiver shall request further instructions or orders from the court.

(e) The court, upon receipt of a notice pursuant to subdivision (d), shall consider appropriate orders or instructions to enable the receiver to correct the substandard conditions or to terminate or limit the period of receivership.

SEC. 2. Section 568.3 is added to the Code of Civil Procedure, to read:

568.3. Any tenant of real property that is subject to receivership, a tenant association or organization, or any federal, state, or local enforcement agency, may file a motion in a receivership action for the purpose of seeking further instructions or orders from the court, if either of the following is true:

(a) Substandard conditions exist, as defined by Section 17920.3 of the Health and Safety Code.

(b) A dispute or controversy exists concerning the powers or duties of the receiver affecting a tenant or the public.

SEC. 3. Chapter 6.1 (commencing with Section 50651) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

CHAPTER 6.1. TENANT RELOCATION ASSISTANCE

50651. Any tenant who is displaced or subject to displacement from a residential rental unit as a result of an order to vacate or an order requiring the vacation of a residential unit by a local enforcement agency as a result of a violation so extensive and of such a nature that the immediate health and safety of the residents is endangered, shall be entitled to receive relocation benefits from the owner as specified in this chapter. The local enforcement agency shall determine the eligibility of tenants for benefits pursuant to this chapter.

50653. (a) The relocation benefits required by this chapter shall be paid by the owner or designated agent to the tenant within 10 days after the date that the order to vacate is first mailed to the owner and posted

on the premises, or at least 20 days prior to the vacation date set forth in the order to vacate, whichever occurs later.

(b) If there are fewer than 10 days between the first posting and mailing of the order to vacate and the vacation date, the relocation benefits shall be paid by the owner or designated agent to the tenant within 24 hours after the notice is posted and mailed. The local enforcement agency shall attempt to provide telephonic or written notice to the owner to notify the owner that the benefits are payable immediately. Failure to provide the notice as specified in this section shall not relieve the owner of any obligations imposed by this chapter.

(c) If a tenant is entitled to relocation benefits pursuant to Section 50651, the local enforcement agency shall provide either telephonic or written notice to the tenant of his or her entitlement to the benefits. Written notice may be satisfied by posting a written notice on the premises stating that tenants may be entitled to relocation benefits.

50654. The relocation payment shall be made available by the owner or designated agent to the tenant in each residential unit and shall be a sum equal to two months of the established fair market rent for the area as determined by the Department of Housing and Urban Development pursuant to Section 1437f of Title 42 of the United States Code. In addition, the relocation payment shall include an amount, as determined by the local enforcement agency, sufficient for utility service deposits. The relocation benefits shall be paid by the owner or designated agent in addition to the return, as required by law, of any security deposits held by the owner. The relocation benefits shall be payable on a per residential unit basis.

50655. (a) Any owner or designated agent who does not make timely payment as specified in Section 50653 shall be liable to the tenant for an amount equal to one and one-half times the relocation benefits payable pursuant to Section 50654.

(b) Subdivision (a) shall not apply when relocation benefits are payable fewer than 10 days after the date the order to vacate is first mailed and posted on the premises, if the owner or designated agent makes the payment no later than 10 days after the order is first mailed and posted.

50656. (a) No relocation benefits pursuant to this chapter shall be payable to any tenant who has caused or substantially contributed to the condition giving rise to the order to vacate, as determined by the local enforcement agency, nor shall any relocation benefits be payable to a tenant if any guest or invitee of the tenant has caused or substantially contributed to the condition giving rise to the order to vacate, as determined by the local enforcement agency. The local enforcement agency shall make the determination whether a tenant, tenant's guest, or invitee caused or substantially contributed to the condition, giving rise

to the order to vacate at the same time that the order to vacate the tenants is made.

(b) An owner or designated agent shall not be liable for relocation benefits if the local enforcement agency determines that the unit or structure became unsafe or hazardous as the result of a fire, flood, earthquake, or other event beyond the control of the owner or the designated agent and the owner or designated agent did not cause or contribute to the condition.

(c) In the situations described in subdivisions (a) and (b), the tenants of units within a multiunit structure who did not cause or substantially contribute to the uninhabitable condition shall be eligible for relocation benefits from the local enforcement agency that elects at its discretion to pay relocation payments in accordance with Section 50654 to those tenants.

(d) An owner or designated agent shall not be liable to make any payment as prescribed by this section if the local enforcement agency does not provide for an appeals process for the order to pay relocation benefits.

50657. (a) If the owner or designated agent fails, neglects, or refuses to pay relocation payments to a displaced tenant or a tenant subject to displacement, except in the situations described in Section 50656, the local enforcement agency may advance relocation payments as specified in Section 50654. If the local enforcement agency, pursuant to locally adopted policies, offers to advance relocation payments in accordance with Section 50654, the local enforcement agency shall be entitled to recover from the owner any amount paid to a tenant pursuant to this section except payments made pursuant to subdivision (c) of Section 50656. The local enforcement agency shall also be entitled to recover from the owner or designated agent an additional amount equal to the sum of one-half the amount so paid, but not to exceed ten thousand dollars ($10,000), as a penalty for failure to make timely payment to the displaced tenant, and the local enforcement agency's actual costs, including direct and indirect costs, of administering the provision of benefits to the displaced tenant.

(b) Any amounts paid by the local enforcement agency, except pursuant to subdivision (c) of Section 50656, and any applicable penalties and actual costs may also be placed as a lien against the property by the local enforcement agency by recording the lien in the county recorder's office of the county in which the real property is located.

(c) Any local enforcement agency that elects, at its own option pursuant to subdivision (a), to advance relocation payments to displaced tenants when the owner or designated agent fails, neglects, or refuses to pay relocation payments to displaced tenants, shall prior to instituting

any action to collect from the owner or designated agent relocation benefits paid pursuant to this section, or to impose a lien therefor, send to the owner or designated agent by first-class mail, postage prepaid, at the owner's address as shown on the last equalized assessment roll, an itemized accounting of all benefits paid by the local enforcement agency to the owner's tenants, and any penalties or costs the local enforcement agency is seeking to recover as authorized pursuant to subdivision (a). If the owner or designated agent contends that not all of the benefits are chargeable to the owner or designated agent because the recipients were not displaced tenants, no benefits were payable pursuant to Section 50656, or on other grounds, the owner or designated agent shall submit a written appeal to the director of the local enforcement agency within 20 days after receipt by the owner or designated agent of the itemized accounting. The director, or the director's designee, shall hold an administrative hearing for the purpose of determining the amount of benefits paid that are chargeable to the owner or designated agent, and any penalties or costs the local enforcement agency may recover pursuant to subdivision (a). The local enforcement agency shall provide an administrative appeal process for any appeal of a decision of the director or the director's designee. The final decision of the local appellate body shall be subject to Section 1094.5 of the Code of Civil Procedure. If the owner fails to obtain a more favorable decision than that set forth in the itemized accounting, the owner or designated agent shall be liable to the local enforcement agency for the costs of the administrative hearing and appeal, not to exceed five thousand dollars ($5,000). The failure to receive the itemized accounting shall not relieve the owner of any obligation to the city or county.

(d) Nothing in this chapter shall be construed to require the local enforcement agency to pay any relocation benefits to any tenant, or assume any obligation, requirement, or duty of the owner pursuant to this chapter.

50658. Notwithstanding subdivision (b) of Section 50653 and subdivision (a) of Section 50657, if there are fewer than 10 days between the first posting and mailing of the order to vacate and the vacation date, and if the local enforcement agency advances relocation benefits to any tenants, prior to the expiration of the 10-day period, the owner shall not be required to reimburse the local enforcement agency for a charge identified on the itemized accounting described in subdivision (c) of Section 50657 if the owner contests the charge within 30 days after the itemized accounting is mailed to the owner or designated agent pursuant to subdivision (c) of Section 50657. The owner or designated agent shall pay the charge that was the subject of the appeal pursuant to subdivision (c) of Section 50657 within 30 days after an adverse decision by the

director of the local enforcement agency on the appeal is mailed to the owner.

50659. The remedies under this chapter are cumulative and in addition to any other remedies available under federal, state, or local law.

50659.1. Any order by a local agency that requires a tenant's displacement and is issued to an owner, designated agent, or tenant, shall be accompanied by a summary of the provisions of this chapter. Failure to provide a summary shall not relieve any person of the obligations imposed by this chapter.

50659.2. While it is the intent of the Legislature in enacting this chapter to provide an expedient means by which to provide relocation funds to tenants, nothing in this chapter shall be construed to limit the rights available to owners, designated agents, or tenants under any other provision of law. Furthermore, nothing in this chapter shall be construed to deprive an owner of procedural due process rights guaranteed by law, including, but not limited to, a right to file a judicial action against a local enforcement agency that has failed to proceed in a manner required by law.

50659.3. When seeking reimbursement under an optional local program intended to advance relocation payments to displaced tenants when the owner fails, neglects, or refuses to pay relocation payments to displaced tenants pursuant to the provisions of this chapter, the local code enforcement agency shall first explore the potential of using funds from any available federally funded program that provides tenant relocation assistance in cases of local code enforcement activities.

SEC. 4. Section 17980.6 of the Health and Safety Code is amended to read:

17980.6. If any building is maintained in a manner that violates any provisions of this part, the building standards published in the State Building Standards Code relating to the provisions of this part, any other rule or regulation adopted pursuant to the provisions of this part, or any provision in a local ordinance that is similar to a provision in this part, and the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered, the enforcement agency may issue an order or notice to repair or abate pursuant to this part. Any order or notice pursuant to this subdivision shall be provided either by both posting a copy of the order or notice in a conspicuous place on the property and by first-class mail to each affected residential unit, or by posting a copy of the order or notice in a conspicuous place on the property and in a prominent place on each affected residential unit. The order or notice shall include, but is not limited to, all of the following:

(a) The name, address, and telephone number of the agency that issued the notice or order.

(b) The date, time, and location of any public hearing or proceeding concerning the order or notice.

(c) Information that the lessor cannot retaliate against a lessee pursuant to Section 1942.5 of the Civil Code.

SEC. 5. Section 17980.7 of the Health and Safety Code is amended to read:

17980.7. If the owner fails to comply within a reasonable time with the terms of the order or notice issued pursuant to Section 17980.6, the following provisions shall apply:

(a) The enforcement agency may seek and the court may order imposition of the penalties provided for under Chapter 6 (commencing with Section 17995).

(b) (1) The enforcement agency may seek and the court may order the owner to not claim any deduction with respect to state taxes for interest, taxes, expenses, depreciation, or amortization paid or incurred with respect to the cited structure, in the taxable year of the initial order or notice, in lieu of the enforcement agency processing a violation in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code.

(2) If the owner fails to comply with the terms of the order or notice to correct the condition that caused the violation pursuant to Section 17980.6, the court may order the owner to not claim these tax benefits for the following year.

(c) The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision. In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of the petition was served not less than three days prior to filing the petition, pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, to all persons with a recorded interest in the real property upon which the substandard building exists.

(1) In appointing a receiver, the court shall consider whether the owner has been afforded a reasonable opportunity to correct the conditions cited in the notice of violation.

(2) The court shall not appoint any person as a receiver unless the person has demonstrated to the court his or her capacity and expertise to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the building.

(3) If a receiver is appointed, the owner and his or her agent of the substandard building shall be enjoined from collecting rents from the tenants, interfering with the receiver in the operation of the substandard building, and encumbering or transferring the substandard building or real property upon which the building is situated.

(4) Any receiver appointed pursuant to this section shall have all of the following powers and duties in the order of priority listed in this paragraph, unless the court otherwise permits:

(A) To take full and complete control of the substandard property.

(B) To manage the substandard building and pay expenses of the operation of the substandard building and real property upon which the building is located, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the real property.

(C) To secure a cost estimate and construction plan from a licensed contractor for the repairs necessary to correct the conditions cited in the notice of violation.

(D) To enter into contracts and employ a licensed contractor as necessary to correct the conditions cited in the notice of violation.

(E) To collect all rents and income from the substandard building.

(F) To use all rents and income from the substandard building to pay for the cost of rehabilitation and repairs determined by the court as necessary to correct the conditions cited in the notice of violation.

(G) To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and secure that debt, with court approval, with a lien on the real property upon which the substandard building is located. The lien shall be recorded in the county recorder's office in the county within which the building is located.

(H) To exercise the powers granted to receivers under Section 568 of the Code of Civil Procedure.

(5) The receiver shall be entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages.

(6) If the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the substandard building by any tenant, to the extent that the tenant cannot safely reside in his or her unit, then the receiver shall provide relocation benefits in accordance with subparagraph (A) of paragraph (3) of subdivision (d).

(7) The relocation compensation provided for in this section shall not preempt any local ordinance that provides for greater relocation assistance.

(8) In addition to any reporting required by the court, the receiver shall prepare monthly reports to the state or local enforcement agency which shall contain information on at least the following items:

(A) The total amount of rent payments received.

(B) Nature and amount of contracts negotiated relative to the operation or repair of the property.

(C) Payments made toward the repair of the premises.

(D) Progress of necessary repairs.

(E) Other payments made relative to the operation of the building.

(F) Amount of tenant relocation benefits paid.

(9) The receiver shall be discharged when the conditions cited in the notice of violation have been remedied in accordance with the court order or judgment and a complete accounting of all costs and repairs has been delivered to the court. Upon removal of the condition, the owner, the mortgagee, or any lienor of record may apply for the discharge of all moneys not used by the receiver for removal of the condition and all other costs authorized by this section.

(10) After discharging the receiver, the court may retain jurisdiction for a time period not to exceed 18 consecutive months, and require the owner and the enforcement agency responsible for enforcing Section 17980 to report to the court in accordance with a schedule determined by the court.

(11) The prevailing party in an action pursuant to this section shall be entitled to reasonable attorney's fees and court costs as may be fixed by the court.

(12) The county recorder may charge and collect fees for the recording of all notices and other documents required by this section pursuant to Article 5 (commencing with Section 27360) of Chapter 6 of Division 2 of Title 3 of the Government Code.

(13) Nothing in this section shall be construed to limit those rights available to tenants and owners under any other provision of the law.

(14) Nothing in this section shall be construed to deprive an owner of a substandard building of all procedural due process rights guaranteed by the California Constitution and the United States Constitution, including, but not limited to, receipt of notice of the violation claimed and an adequate and reasonable period of time to comply with any orders which are issued by the enforcement agency or the court.

(d) If the court finds that a building is in a condition which substantially endangers the health and safety of residents pursuant to Section 17980.6, upon the entry of any order or judgment, the court shall do all of the following:

(1) Order the owner to pay all reasonable and actual costs of the enforcement agency including, but not limited to, inspection costs, investigation costs, enforcement costs, attorney fees or costs, and all costs of prosecution.

(2) Order that the local enforcement agency shall provide the tenant with notice of the court order or judgment.

(3) (A) Order that if the owner undertakes repairs or rehabilitation as a result of being cited for a notice under this chapter, and if the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the premises by any lawful tenant, so that the tenant cannot safely reside in the premises, then the owner shall provide or pay relocation benefits to each lawful tenant. These benefits shall

consist of actual reasonable moving and storage costs and relocation compensation. The actual moving and storage costs shall consist of all of the following:

(i) Transportation of the tenant's personal property to the new location. The new location shall be in close proximity to the substandard premises, except where relocation to a new location beyond a close proximity is determined by the court to be justified.

(ii) Packing, crating, unpacking, and uncrating the tenant's personal property.

(iii) Insurance of the tenant's property while in transit.

(iv) The reasonable replacement value of property lost, stolen, or damaged (not through the fault or negligence of the displaced person, his or her agent or employee) in the process of moving, where insurance covering the loss, theft, or damage is not reasonably available.

(v) The cost of disconnecting, dismantling, removing, reassembling, reconnecting, and reinstalling machinery, equipment, or other personal property of the tenant, including connection charges imposed by utility companies for starting utility service.

(B) (i) The relocation compensation shall be an amount equal to the differential between the contract rent and the fair market rental value determined by the federal Department of Housing and Urban Development for a unit of comparable size within the area for the period that the unit is being repaired, not to exceed 120 days.

(ii) If the court finds that a tenant has been substantially responsible for causing or substantially contributing to the substandard conditions, then the relocation benefits of this section shall not be paid to this tenant. Each other tenant on the premises who has been ordered to relocate due to the substandard conditions and who is not substantially responsible for causing or contributing to the conditions shall be paid these benefits and moving costs at the time that he or she actually relocates.

(4) Determine the date when the tenant is to relocate, and order the tenant to notify the enforcement agency and the owner of the address of the premises to which he or she has relocated within five days after the relocation.

(5) (A) Order that the owner shall offer the first right to occupancy of the premises to each tenant who received benefits pursuant to subparagraph (A) of paragraph (3), before letting the unit for rent to a third party. The owner's offer on the first right to occupancy to the tenant shall be in writing, and sent by first-class certified mail to the address given by the tenant at the time of relocation. If the owner has not been provided the tenant's address by the tenant as prescribed by this section, the owner shall not be required to provide notice under this section or offer the tenant the right to return to occupancy.

(B) The tenant shall notify the owner in writing that he or she will occupy the unit. The notice shall be sent by first-class certified mail no later than 10 days after the notice has been mailed by the owner.

(6) Order that failure to comply with any abatement order under this chapter shall be punishable by civil contempt, penalties under Chapter 6 (commencing with Section 17995), and any other penalties and fines as are available.

(e) The initiation of a proceeding or entry of a judgment pursuant to this section or Section 17980.6 shall be deemed to be a ''proceeding'' or ''judgement'' as provided by paragraph (4) or (5) of subdivision (a) of Section 1942.5 of the Civil Code.

(f) The term ''owner,'' for the purposes of this section, shall include the owner, including any public entity that owns residential real property, at the time of the initial notice or order and any successor in interest who had actual or constructive knowledge of the notice, order, or prosecution.

(g) These remedies shall be in addition to those provided by any other law.

(h) Nothing in this section or in Section 17980.6 shall impair the rights of an owner exercising his or her rights established pursuant to Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.

SEC. 5.5. Section 17980.7 of the Health and Safety Code is amended to read:

17980.7. If the owner fails to comply within a reasonable time with the terms of the order or notice issued pursuant to Section 17980.6, the following provisions shall apply:

(a) The enforcement agency may seek and the court may order imposition of the penalties provided for under Chapter 6 (commencing with Section 17995).

(b) (1) The enforcement agency may seek and the court may order the owner to not claim any deduction with respect to state taxes for interest, taxes, expenses, depreciation, or amortization paid or incurred with respect to the cited structure, in the taxable year of the initial order or notice, in lieu of the enforcement agency processing a violation in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code.

(2) If the owner fails to comply with the terms of the order or notice to correct the condition that caused the violation pursuant to Section 17980.6, the court may order the owner to not claim these tax benefits for the following year.

(c) The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision. In its

petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of the petition was served not less than three days prior to filing the petition, pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, to all persons with a recorded interest in the real property upon which the substandard building exists.

(1) In appointing a receiver, the court shall consider whether the owner has been afforded a reasonable opportunity to correct the conditions cited in the notice of violation.

(2) The court shall not appoint any person as a receiver unless the person has demonstrated to the court his or her capacity and expertise to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the building. A court may appoint as a receiver a nonprofit organization or community development corporation. In addition to the duties and powers that may be granted pursuant to this section, the nonprofit organization or community development corporation may also apply for grants to assist in the rehabilitation of the building.

(3) If a receiver is appointed, the owner and his or her agent of the substandard building shall be enjoined from collecting rents from the tenants, interfering with the receiver in the operation of the substandard building, and encumbering or transferring the substandard building or real property upon which the building is situated.

(4) Any receiver appointed pursuant to this section shall have all of the following powers and duties in the order of priority listed in this paragraph, unless the court otherwise permits:

(A) To take full and complete control of the substandard property.

(B) To manage the substandard building and pay expenses of the operation of the substandard building and real property upon which the building is located, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the real property.

(C) To secure a cost estimate and construction plan from a licensed contractor for the repairs necessary to correct the conditions cited in the notice of violation.

(D) To enter into contracts and employ a licensed contractor as necessary to correct the conditions cited in the notice of violation.

(E) To collect all rents and income from the substandard building.

(F) To use all rents and income from the substandard building to pay for the cost of rehabilitation and repairs determined by the court as necessary to correct the conditions cited in the notice of violation.

(G) To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and, with court approval, secure that debt and any moneys owed to the receiver for

services performed pursuant to this section with a lien on the real property upon which the substandard building is located. The lien shall be recorded in the county recorder's office in the county within which the building is located.

(H) To exercise the powers granted to receivers under Section 568 of the Code of Civil Procedure.

(5) The receiver shall be entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages.

(6) If the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the substandard building by any tenant, to the extent that the tenant cannot safely reside in his or her unit, then the receiver shall provide relocation benefits in accordance with subparagraph (A) of paragraph (3) of subdivision (d).

(7) The relocation compensation provided for in this section shall not preempt any local ordinance that provides for greater relocation assistance.

(8) In addition to any reporting required by the court, the receiver shall prepare monthly reports to the state or local enforcement agency which shall contain information on at least the following items:

(A) The total amount of rent payments received.

(B) Nature and amount of contracts negotiated relative to the operation or repair of the property.

(C) Payments made toward the repair of the premises.

(D) Progress of necessary repairs.

(E) Other payments made relative to the operation of the building.

(F) Amount of tenant relocation benefits paid.

(9) The receiver shall be discharged when the conditions cited in the notice of violation have been remedied in accordance with the court order or judgment and a complete accounting of all costs and repairs has been delivered to the court. Upon removal of the condition, the owner, the mortgagee, or any lienor of record may apply for the discharge of all moneys not used by the receiver for removal of the condition and all other costs authorized by this section.

(10) After discharging the receiver, the court may retain jurisdiction for a time period not to exceed 18 consecutive months, and require the owner and the enforcement agency responsible for enforcing Section 17980 to report to the court in accordance with a schedule determined by the court.

(11) The prevailing party in an action pursuant to this section shall be entitled to reasonable attorney's fees and court costs as may be fixed by the court.

(12) The county recorder may charge and collect fees for the recording of all notices and other documents required by this section

pursuant to Article 5 (commencing with Section 27360) of Chapter 6 of Division 2 of Title 3 of the Government Code.

(13) Nothing in this section shall be construed to limit those rights available to tenants and owners under any other provision of the law.

(14) Nothing in this section shall be construed to deprive an owner of a substandard building of all procedural due process rights guaranteed by the California Constitution and the United States Constitution, including, but not limited to, receipt of notice of the violation claimed and an adequate and reasonable period of time to comply with any orders which are issued by the enforcement agency or the court.

(d) If the court finds that a building is in a condition which substantially endangers the health and safety of residents pursuant to Section 17980.6, upon the entry of any order or judgment, the court shall do all of the following:

(1) Order the owner to pay all reasonable and actual costs of the enforcement agency including, but not limited to, inspection costs, investigation costs, enforcement costs, attorney fees or costs, and all costs of prosecution.

(2) Order that the local enforcement agency shall provide the tenant with notice of the court order or judgment.

(3) (A) Order that if the owner undertakes repairs or rehabilitation as a result of being cited for a notice under this chapter, and if the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the premises by any lawful tenant, so that the tenant cannot safely reside in the premises, then the owner shall provide or pay relocation benefits to each lawful tenant. These benefits shall consist of actual reasonable moving and storage costs and relocation compensation. The actual moving and storage costs shall consist of all of the following:

(i) Transportation of the tenant's personal property to the new location. The new location shall be in close proximity to the substandard premises, except where relocation to a new location beyond a close proximity is determined by the court to be justified.

(ii) Packing, crating, unpacking, and uncrating the tenant's personal property.

(iii) Insurance of the tenant's property while in transit.

(iv) The reasonable replacement value of property lost, stolen, or damaged (not through the fault or negligence of the displaced person, his or her agent or employee) in the process of moving, where insurance covering the loss, theft, or damage is not reasonably available.

(v) The cost of disconnecting, dismantling, removing, reassembling, reconnecting, and reinstalling machinery, equipment, or other personal property of the tenant, including connection charges imposed by utility companies for starting utility service.

(B) (i) The relocation compensation shall be an amount equal to the differential between the contract rent and the fair market rental value determined by the federal Department of Housing and Urban Development for a unit of comparable size within the area for the period that the unit is being repaired, not to exceed 120 days.

(ii) If the court finds that a tenant has been substantially responsible for causing or substantially contributing to the substandard conditions, then the relocation benefits of this section shall not be paid to this tenant. Each other tenant on the premises who has been ordered to relocate due to the substandard conditions and who is not substantially responsible for causing or contributing to the conditions shall be paid these benefits and moving costs at the time that he or she actually relocates.

(4) Determine the date when the tenant is to relocate, and order the tenant to notify the enforcement agency and the owner of the address of the premises to which he or she has relocated within five days after the relocation.

(5) (A) Order that the owner shall offer the first right to occupancy of the premises to each tenant who received benefits pursuant to subparagraph (A) of paragraph (3), before letting the unit for rent to a third party. The owner's offer on the first right to occupancy to the tenant shall be in writing, and sent by first-class certified mail to the address given by the tenant at the time of relocation. If the owner has not been provided the tenant's address by the tenant as prescribed by this section, the owner shall not be required to provide notice under this section or offer the tenant the right to return to occupancy.

(B) The tenant shall notify the owner in writing that he or she will occupy the unit. The notice shall be sent by first-class certified mail no later than 10 days after the notice has been mailed by the owner.

(6) Order that failure to comply with any abatement order under this chapter shall be punishable by civil contempt, penalties under Chapter 6 (commencing with Section 17995), and any other penalties and fines as are available.

(e) The initiation of a proceeding or entry of a judgment pursuant to this section or Section 17980.6 shall be deemed to be a "proceeding" or "judgment" as provided by paragraph (4) or (5) of subdivision (a) of Section 1942.5 of the Civil Code.

(f) The term "owner," for the purposes of this section, shall include the owner, including any public entity that owns residential real property, at the time of the initial notice or order and any successor in interest who had actual or constructive knowledge of the notice, order, or prosecution.

(g) These remedies shall be in addition to those provided by any other law.

(h) Nothing in this section or in Section 17980.6 shall impair the rights of an owner exercising his or her rights established pursuant to Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.

SEC. 6. Section 5.5 of this bill incorporates amendments to Section 17980.7 of the Health and Safety Code proposed by both this bill and AB 1467. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 17980.7 of the Health and Safety Code, and (3) this bill is enacted after AB 1467, in which case Section 5 of this bill shall not become operative.

CHAPTER 415

An act to add Section 827.8 to the Insurance Code, relating to insurance.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 827.8 is added to the Insurance Code, to read:

827.8. An offer or sale of voting common stock or preferred stock of and by a foreign or alien insurer to fire and casualty broker-agents, as defined in Section 33.5, shall be exempt from the requirements of this article if all of the following requirements are met:

(a) The sale shall not be made to more than 35 fire and casualty broker-agents in the State of California.

(b) Each fire and casualty broker-agent to whom an offer is made is an ''accredited investor'' as defined in Regulation D under the Federal Securities Act of 1933, as amended.

(c) Each fire and casualty broker-agent to whom an offer is made meets all of the following requirements:

(1) The broker-agent shall have been appointed by the admitted insurer for a period of at least one year and that admitted insurer shall meet all of the following requirements:

(A) Be authorized to transact property and casualty insurance. For purposes of this section, property and casualty insurance means insurance falling within classes 2, 3, 7, 8, 10, 11, 12, 14, 15, 16, 18, and 20 under Section 100 except home protection contracts, as defined in Section 12740.

(B) Have at least four hundred million dollars ($400,000,000) of statutory capital and surplus.

(C) Hold a certificate of authority in good standing with this state and have no regulatory action relating to financial hazard or fraud against the company in the last three years from states, including this state, where the insurer is authorized as an admitted insurer to do business.

(D) Is currently reinsuring or has definite plans to reinsure business produced by that broker-agent with the same foreign or alien insurer offering securities to the broker-agent.

(2) The broker-agent generates five million dollars ($5,000,000) in premiums per year and plans on transferring or writing at least one million dollars ($1,000,000) per year with the admitted insurer.

(3) The broker-agent shall pay at least fifty thousand dollars ($50,000) for the securities purchased in the transaction but not in excess of five hundred thousand dollars ($500,000).

(4) The broker-agent shall have a net worth of at least five million dollars ($5,000,000).

(d) The offer and sale of stock is accompanied by the prospectus, private placement memorandum, together with any other information required pursuant to Regulation D of the Federal Securities Act of 1933.

(e) The consideration received by the issuer for the stock to be issued consists solely of cash.

(f) No promotional consideration or selling expenses have been given, paid, or incurred in connection with the issuance of stock, and the offer and sale of stock is not accompanied by the publication of any advertisement.

(g) All stock issued shall be evidenced by a certificate that shall have a notice printed prominently on its face restricting the transfer of the stock solely to the issuer or investors who have been shareholders of the issuer for at least three years and who are approved by at least 51 percent of the members of the board of directors of the issuer.

(h) The issuer of both the common and preferred stock shall be all of the following:

(1) A foreign or alien insurer that does not transact insurance directly in California, but is solely a reinsurer.

(2) A reinsurer that only reinsures commercial lines property and casualty insurance, as specified in subparagraph (A) of paragraph (1) of subdivision (c).

CHAPTER 416

An act to amend Section 87164 of the Education Code, relating to whistleblower protection.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 87164 of the Education Code is amended to read:

87164. (a) An employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a community college administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 87163 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars ($10,000) and imprisonment in the county jail for a period not to exceed one year. An employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 87163, the local law enforcement agency may report the nature and details of the activity to the governing board of the community college district.

(c) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 87163 within 10 working days of its submission. The executive officer of the State Personnel Board shall complete findings of the hearing or investigation within 60 working days thereafter and shall provide a copy of the findings to the complaining employee or applicant for employment with a public school employer and to the appropriate supervisors, administrator, or employer. This hearing shall be conducted

in accordance with Section 18671.2 of the Government Code. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this subdivision shall not apply.

(d) If the findings of the executive officer of the State Personnel Board set forth acts of alleged misconduct by the supervisor, community college administrator, or public school employer, the supervisor, administrator, or employer may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's usual rules governing appeals, hearings, investigations, and disciplinary proceedings.

(e) If, after the hearing, the State Personnel Board determines that a violation of Section 87163 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, backpay, restoration of lost service credit if appropriate, and the expungement of any adverse records of the employee or applicant for employment with a public school employer who was the subject of the alleged acts of misconduct prohibited by Section 87163.

(f) Whenever the State Personnel Board determines that a supervisor, community college administrator, or public school employer has violated Section 87163, it shall cause an entry to that effect to be made in the supervisor's, community college administrator's, or public school employer's official personnel records.

(g) In order for the Governor and the Legislature to determine the need to continue or modify personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by employees, the State Personnel Board, by June 30 of each year, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

(h) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure 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 where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency. Nothing in this

subdivision requires an injured party to file a complaint with the State Personnel Board prior to seeking relief for damages in a court of law.

(i) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to an employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes an action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 87162.

(j) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(k) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of an employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(*l*) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

CHAPTER 417

An act to amend Sections 2024 and 2040 of the Family Code, to amend Sections 1300, 1301, 1303, 5003, 5302, and 21111 of, to add Section 856.5 to, to add Part 4 (commencing with Section 5600) to Division 5 of, and to repeal Section 6202 of, the Probate Code, relating to nonprobate transfers.

[Approved by Governor October 1, 2001. Filed with
Secretary of State October 2, 2001.]

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

SECTION 1. Section 2024 of the Family Code is amended to read:

2024. (a) A petition for dissolution of marriage, nullity of marriage, or legal separation of the parties, or a joint petition for summary dissolution of marriage, shall contain the following notice:

"Dissolution or annulment of your marriage may automatically cancel your spouse's rights under your will, trust, retirement benefit plan, power of attorney, pay on death bank account, transfer on death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel your spouse's rights as beneficiary of your life insurance policy. If these are not the results that you want, you must change your will, trust, account agreement, or other similar document to reflect your actual wishes.

Dissolution or annulment of your marriage may also automatically cancel your rights under your spouse's will, trust, retirement benefit plan, power of attorney, pay on death bank account, transfer on death vehicle registration, and survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel your rights as beneficiary of your spouse's life insurance policy.

You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement benefit plans, and credit reports to determine whether they should be changed or whether you should take any other actions in view of the dissolution or annulment of your marriage, or your legal separation. However, some changes may require the agreement of your spouse or a court order (see Part 3 (commencing with Section 231) of Division 2 of the Family Code)."

(b) A judgment for dissolution of marriage, for nullity of marriage, or for legal separation of the parties shall contain the following notice:

"Dissolution or annulment of your marriage may automatically cancel your spouse's rights under your will, trust, retirement benefit plan, power of attorney, pay on death bank account, transfer on death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel your spouse's rights as beneficiary of your life insurance policy. If these are not the results that you want, you must change your will, trust, account agreement, or other similar document to reflect your actual wishes.

Dissolution or annulment of your marriage may also automatically cancel your rights under your spouse's will, trust, retirement benefit plan, power of attorney, pay on death bank account, transfer on death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel your rights as beneficiary of your spouse's life insurance policy.

You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement benefit plans, and credit reports to determine whether they should be changed or whether you should take any other actions in view of the dissolution or annulment of your marriage, or your legal separation.''

SEC. 2. Section 2040 of the Family Code is amended to read:

2040. (a) In addition to the contents required by Section 412.20 of the Code of Civil Procedure, the summons shall contain a temporary restraining order:

(1) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.

(2) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party.

Notwithstanding the foregoing, nothing in the restraining order shall preclude a party from using community property, quasi-community property, or the party's own separate property to pay reasonable attorney's fees and costs in order to retain legal counsel in the proceeding. A party who uses community property or quasi-community property to pay his or her attorney's retainer for fees and costs under this provision shall account to the community for the use of the property. A party who uses other property that is subsequently determined to be the separate property of the other party to pay his or her attorney's retainer for fees and costs under this provision shall account to the other party for the use of the property.

(3) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties and their child or children for whom support may be ordered.

(4) Restraining both parties from creating a nonprobate transfer or modifying a nonprobate transfer in a manner that affects the disposition of property subject to the transfer, without the written consent of the other party or an order of the court.

(b) Nothing in this section restrains any of the following:

(1) Creation, modification, or revocation of a will.

(2) Revocation of a nonprobate transfer, including a revocable trust, pursuant to the instrument, provided that notice of the change is filed and served on the other party before the change takes effect.

(3) Elimination of a right of survivorship to property, provided that notice of the change is filed and served on the other party before the change takes effect.

(4) Creation of an unfunded revocable or irrevocable trust.

(5) Execution and filing of a disclaimer pursuant to Part 8 (commencing with Section 260) of Division 2 of the Probate Code.

(c) In all actions filed on and after January 1, 1995, the summons shall contain the following notice:

''WARNING: California law provides that, for purposes of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint form is presumed to be community property. If either party to this action should die before the jointly held community property is divided, the language of how title is held in the deed (i.e., joint tenancy, tenants in common, or community property) will be controlling and not the community property presumption. You should consult your attorney if you want the community property presumption to be written into the recorded title to the property.''

(d) For the purposes of this section:

(1) ''Nonprobate transfer'' means an instrument, other than a will, that makes a transfer of property on death, including a revocable trust, pay on death account in a financial institution, Totten trust, transfer on death registration of personal property, or other instrument of a type described in Section 5000 of the Probate Code.

(2) ''Nonprobate transfer'' does not include a provision for the transfer of property on death in an insurance policy or other coverage held for the benefit of the parties and their child or children for whom support may be ordered, to the extent that the provision is subject to paragraph (3) of subdivision (a).

(e) The restraining order included in the summons shall include descriptions of the notices required by paragraphs (2) and (3) of subdivision (b).

SEC. 3. Section 856.5 is added to the Probate Code, to read:

856.5. The court may not grant a petition under this chapter if the court determines that the matter should be determined by a civil action.

SEC. 4. Section 1300 of the Probate Code is amended to read:

1300. In all proceedings governed by this code, an appeal may be taken from the making of, or the refusal to make, any of the following orders:

(a) Directing, authorizing, approving, or confirming the sale, lease, encumbrance, grant of an option, purchase, conveyance, or exchange of property.

(b) Settling an account of a fiduciary.

(c) Authorizing, instructing, or directing a fiduciary, or approving or confirming the acts of a fiduciary.

(d) Directing or allowing payment of a debt, claim, or cost.

(e) Fixing, authorizing, allowing, or directing payment of compensation or expenses of an attorney.

(f) Fixing, directing, authorizing, or allowing payment of the compensation or expenses of a fiduciary.

(g) Surcharging, removing, or discharging a fiduciary.

(h) Transferring the property of the estate to a fiduciary in another jurisdiction.

(i) Allowing or denying a petition of the fiduciary to resign.

(j) Discharging a surety on the bond of a fiduciary.

(k) Adjudicating the merits of a claim made under Part 19 (commencing with Section 850) of Division 2.

SEC. 5. Section 1301 of the Probate Code is amended to read:

1301. With respect to guardianships, conservatorships, and other protective proceedings, the grant or refusal to grant the following orders is appealable:

(a) Granting or revoking of letters of guardianship or conservatorship, except letters of temporary guardianship or temporary conservatorship.

(b) Granting permission to the guardian or conservator to fix the residence of the ward or conservatee at a place not within this state.

(c) Directing, authorizing, approving, or modifying payments, whether for support, maintenance, or education of the ward or conservatee or for a person legally entitled to support, maintenance, or education from the ward or conservatee.

(d) Granting or denying a petition under Section 2423 or under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 of Division 4.

(e) Affecting the legal capacity of the conservatee pursuant to Chapter 4 (commencing with Section 1870) of Part 3 of Division 4.

(f) Adjudicating the merits of a claim under Article 5 (commencing with Section 2500) of Chapter 6 of Part 4 of Division 4.

(g) Granting or denying a petition under Chapter 3 (commencing with Section 3100) of Part 6 of Division 4.

SEC. 6. Section 1303 of the Probate Code is amended to read:

1303. With respect to a decedent's estate, the grant or refusal to grant the following orders is appealable:

(a) Granting or revoking letters to a personal representative, except letters of special administration or letters of special administration with general powers.

(b) Admitting a will to probate or revoking the probate of a will.

(c) Setting aside a small estate under Section 6609.

(d) Setting apart a probate homestead or property claimed to be exempt from enforcement of a money judgment.

(e) Granting, modifying, or terminating a family allowance.

(f) Determining heirship, succession, entitlement, or the persons to whom distribution should be made.

(g) Directing distribution of property.

(h) Determining that property passes to, or confirming that property belongs to, the surviving spouse under Section 13656.

(i) Authorizing a personal representative to invest or reinvest surplus money under Section 9732.

(j) Determining whether an action constitutes a contest under Chapter 2 (commencing with Section 21320) of Part 3 of Division 11.

(k) Determining the priority of debts under Chapter 3 (commencing with Section 11440) of Part 9 of Division 7.

SEC. 7. Section 5003 of the Probate Code is amended to read:

5003. (a) A holder of property under an instrument of a type described in Section 5000 may transfer the property in compliance with a provision for a nonprobate transfer on death that satisfies the terms of the instrument, whether or not the transfer is consistent with the beneficial ownership of the property as between the person who executed the provision for transfer of the property and other persons having an interest in the property or their successors, and whether or not the transfer is consistent with the rights of the person named as beneficiary.

(b) Except as provided in this subdivision, no notice or other information shown to have been available to the holder of the property affects the right of the holder to the protection provided by subdivision (a). The protection provided by subdivision (a) does not extend to a transfer made after either of the following events:

(1) The holder of the property has been served with a contrary court order.

(2) The holder of the property has been served with a written notice of a person claiming an adverse interest in the property. However, this paragraph does not apply to a pension plan to the extent the transfer is a periodic payment pursuant to the plan.

(c) The protection provided by this section does not affect the rights of the person who executed the provision for transfer of the property and other persons having an interest in the property or their successors in disputes among themselves concerning the beneficial ownership of the property.

(d) The protection provided by this section is not exclusive of any protection provided the holder of the property by any other provision of law.

(e) A person shall not serve notice under paragraph (2) of subdivision (b) in bad faith. If the court in an action or proceeding relating to the rights of the parties determines that a person has served notice under paragraph (2) of subdivision (b) in bad faith, the court shall award against the person the cost of the action or proceeding, including a reasonable attorney's fee, and the damages caused by the service.

SEC. 8. Section 5302 of the Probate Code is amended to read:

5302. Subject to Section 5600:

(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intent. If there are two or more surviving parties, their respective ownerships during lifetime are in proportion to their previous ownership interests under Section 5301 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before the decedent's death; and the right of survivorship continues between the surviving parties.

(b) If the account is a P.O.D. account:

(1) On death of one of two or more parties, the rights to any sums remaining on deposit are governed by subdivision (a).

(2) On death of the sole party or of the survivor of two or more parties, (A) any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the party, (B) if two or more P.O.D. payees survive, any sums remaining on deposit belong to them in equal and undivided shares unless the terms of the account or deposit agreement expressly provide for different shares, and (C) if two or more P.O.D. payees survive, there is no right of survivorship in the event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a Totten trust account:

(1) On death of one of two or more trustees, the rights to any sums remaining on deposit are governed by subdivision (a).

(2) On death of the sole trustee or the survivor of two or more trustees, (A) any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or

more die before the trustee, unless there is clear and convincing evidence of a different intent, (B) if two or more beneficiaries survive, any sums remaining on deposit belong to them in equal and undivided shares unless the terms of the account or deposit agreement expressly provide for different shares, and (C) if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of the decedent's estate.

(e) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a Totten trust account, or a P.O.D. payee designation, cannot be changed by will.

SEC. 9. Part 4 (commencing with Section 5600) is added to Division 5 of the Probate Code, to read:

PART 4. NONPROBATE TRANSFER TO FORMER SPOUSE

5600. (a) Except as provided in subdivision (b), a nonprobate transfer to the transferor's former spouse, in an instrument executed by the transferor before or during the marriage, fails if, at the time of the transferor's death, the former spouse is not the transferor's surviving spouse as defined in Section 78, as a result of the dissolution or annulment of the marriage. A judgment of legal separation that does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(b) Subdivision (a) does not cause a nonprobate transfer to fail in any of the following cases:

(1) The nonprobate transfer is not subject to revocation by the transferor at the time of the transferor's death.

(2) There is clear and convincing evidence that the transferor intended to preserve the nonprobate transfer to the former spouse.

(3) A court order that the nonprobate transfer be maintained on behalf of the former spouse is in effect at the time of the transferor's death.

(c) Where a nonprobate transfer fails by operation of this section, the instrument making the nonprobate transfer shall be treated as it would if the former spouse failed to survive the transferor.

(d) Nothing in this section affects the rights of a subsequent purchaser or encumbrancer for value in good faith who relies on the apparent failure of a nonprobate transfer under this section or who lacks knowledge of the failure of a nonprobate transfer under this section.

(e) As used in this section, ''nonprobate transfer'' means a provision, other than a provision of a life insurance policy, of either of the following types:

(1) A provision of a type described in Section 5000.

(2) A provision in an instrument that operates on death, other than a will, conferring a power of appointment or naming a trustee.

5601. (a) Except as provided in subdivision (b), a joint tenancy between the decedent and the decedent's former spouse, created before or during the marriage, is severed as to the decedent's interest if, at the time of the decedent's death, the former spouse is not the decedent's surviving spouse as defined in Section 78, as a result of the dissolution or annulment of the marriage. A judgment of legal separation that does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(b) Subdivision (a) does not sever a joint tenancy in either of the following cases:

(1) The joint tenancy is not subject to severance by the decedent at the time of the decedent's death.

(2) There is clear and convincing evidence that the decedent intended to preserve the joint tenancy in favor of the former spouse.

(c) Nothing in this section affects the rights of a subsequent purchaser or encumbrancer for value in good faith who relies on an apparent severance under this section or who lacks knowledge of a severance under this section.

(d) For purposes of this section, property held in ''joint tenancy'' includes property held as community property with right of survivorship, as described in Section 682.1 of the Civil Code.

5602. (a) Nothing in this part affects the rights of a purchaser or encumbrancer of real property for value who in good faith relies on an affidavit or a declaration under penalty of perjury under the laws of this state that states all of the following:

(1) The name of the decedent.

(2) The date and place of the decedent's death.

(3) A description of the real property transferred to the affiant or declarant by an instrument making a nonprobate transfer or by operation of joint tenancy survivorship.

(4) Either of the following, as appropriate:

(A) The affiant or declarant is the surviving spouse of the decedent.

(B) The affiant or declarant is not the surviving spouse of the decedent, but the rights of the affiant or declarant to the described property are not affected by Section 5600 or 5601.

(b) A person relying on an affidavit or declaration made pursuant to subdivision (a) has no duty to inquire into the truth of the matters stated in the affidavit or declaration.

(c) An affidavit or declaration made pursuant to subdivision (a) may be recorded.

5603. Nothing in this part is intended to limit the court's authority to order a party to a dissolution or annulment of marriage to maintain the former spouse as a beneficiary on any nonprobate transfer described in this part, or to preserve a joint tenancy in favor of the former spouse.

5604. (a) This part is operative on January 1, 2002.

(b) Except as provided in subdivision (c), this part applies to an instrument making a nonprobate transfer or creating a joint tenancy whether executed before, on, or after the operative date of this part.

(c) Sections 5600 and 5601 do not apply, and the applicable law in effect before the operative date of this part applies, to an instrument making a nonprobate transfer or creating a joint tenancy in either of the following circumstances:

(1) The person making the nonprobate transfer or creating the joint tenancy dies before the operative date of this part.

(2) The dissolution of marriage or other event that terminates the status of the nonprobate transfer beneficiary or joint tenant as a surviving spouse occurs before the operative date of this part.

SEC. 10. Section 6202 of the Probate Code is repealed.

SEC. 11. Section 21111 of the Probate Code is amended to read:

21111. Except as provided in Section 21110:

(a) If a transfer, other than a residuary gift or a transfer of a future interest, fails for any reason, the property is transferred as follows:

(1) If the transferring instrument provides for an alternative disposition in the event the transfer fails, the property is transferred according to the terms of the instrument.

(2) If the transferring instrument does not provide for an alternative disposition but does provide for the transfer of a residue, the property becomes a part of the residue transferred under the instrument.

(3) If the transferring instrument does not provide for an alternative disposition and does not provide for the transfer of a residue, the property is transferred to the decedent's estate.

(b) If a residuary gift or a future interest is transferred to two or more persons and the share of a transferee fails for any reason, the share passes to the other transferees in proportion to their other interest in the residuary gift or the future interest.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one

million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 418

An act to amend Section 18941.9 of the Health and Safety Code, relating to building standards.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 18941.9 of the Health and Safety Code is amended to read:

18941.9. (a) The governing body of a local agency may adopt an ordinance that allows a building or other structure located on a former military base to comply with this part and Division 12 (commencing with Section 13000), or any regulations or standards adopted pursuant to this part, in a graduated manner over a period of no more than seven years.

(b) This section shall apply only to those buildings and other structures located on the following military bases or on specified portions of former military bases that were selected for closure or realigned by action of the federal Defense Base Closure and Realignment Commission:

(1) At the former Castle Air Force Base, Building 1015 and Building 1075.

(2) At the former Hamilton Air Force Base, approximately 38 acres, commonly known as Planning Areas 6, 8, 9, and 10.

(3) The former Hunter's Point Naval Shipyard.

(4) The former Treasure Island Naval Station.

(5) The former San Diego Naval Training Center.

(6) At the Marine Corps Air Station-Tustin, approximately 100 acres, commonly known as Planning Areas 1, 2, 3, 6, 8, 9, 10, 16, and 17.

(7) At the Marine Corps Air Services-El Toro, Buildings 295, 296, 297, 313, 317, 318, 319, 360, 371, and 722.

(8) At the former Castle Air Force Base, Buildings 54, 175, 765, 871, 1015, 1200, 1212, 1213, 1319, 1320, 1322, 1324, 1332, 1333, 1335, 1340, 1509, 1535, 1540, and 1545.

(9) At the former Alameda Naval Air Station, Buildings 2, 3, 4, 5, 8, 16, 17, 18, and 94.

(10) At the Point Molate Naval Fuel Depot, Buildings 1, 6, 17, 63, 76, 85, 87, 123, and 132.

(11) At the Oakland Army Base, Buildings 001, 004, 005, 006, 006T, 010, 011, 014, 015, 060, 070, 085, 090, 099, 590, 640, 641, 645, 646, 650, 655, 660, 690, 701, 726, 738, 740, 780, 790, 792, 794, 796, 802, 803, 804, 805, 806, 807, 808, 812, 821, 822, and 823.

(c) The period for graduated compliance shall begin with the earlier of either the date the title to the property was transferred by, or the date a lease is entered into with, the federal government to the local agency.

(d) The authority for a local agency to adopt an ordinance pursuant to this section is an alternative to the authority provided by Section 18941.7, and shall not be used consecutively with Section 18941.7.

(e) An ordinance adopted by a local agency pursuant to subdivision (a) shall not apply to a building or other structure that will be used as a residence.

(f) Prior to the adoption of the ordinance pursuant to subdivision (a), each of the following conditions shall be met:

(1) The use of the building or other structure is not hazardous to life safety, fire safety, health, or sanitation, as determined by the application of state and local building and fire codes and standards by the local building official and fire marshal.

(2) The building or other structure has been transferred by the federal government to the local agency or is under a lease between the local agency and the federal government.

(3) The governing body of the local agency adopts a graduated compliance plan that includes all of the following:

(A) Requirements for buildings and structures with:

(i) No change in occupancy or use with no anticipated alterations.

(ii) No change in occupancy or use with planned alterations.

(iii) Change in occupancy or use with no anticipated alterations.

(iv) Change in occupancy or use with planned alterations.

(B) Requirements for a building and structure compliance inspection and a fire department inspection, and for preparation of inspection reports, prior to issuing a certificate of occupancy.

(C) Requirements for the inspection reports prepared pursuant to subparagraph (B) to be attached to the certificate of occupancy or provided to the occupants of the building or other structure.

(D) Requirements for the terms and period of time for compliance to be specified in the certificate of occupancy.

(E) Requirements that the alterations conform to the standards that were in effect at the time of the alteration.

(g) (1) Before adopting the graduated compliance plan, the local agency shall arrange for the review of the draft plan by an engineer, architect, or building inspector. The engineer or architect shall be

licensed by the State of California, and the building inspector shall be certified by the International Conference of Building Officials or another similar recognized state, national, or international association. The engineer, architect, or building inspector shall not be an employee of the local agency.

(2) The engineer, architect, or building inspector shall review the draft plan for its consistency with the requirements of this section, and report his or her written findings and recommendations to the local agency. If the engineer, architect, or building inspector finds that the draft plan is not consistent with the requirements of this section, the engineer, architect, or building inspector shall recommend changes to the draft plan to achieve consistency.

(3) The local agency shall consider the findings and recommendations of the engineer, architect, or building inspector. If the engineer, architect, or building inspector finds that the draft plan is not consistent with the requirements of this section, the local agency shall take one of the following actions:

(A) Change the draft plan to be consistent with the requirements of this section, as recommended by the engineer, architect, or building inspector.

(B) Adopt the draft plan with some of the recommended changes or without changes, if the local agency makes written findings that explain the reasons why the local agency believes that the draft plan, as adopted, is consistent with the requirements of this section despite the findings and recommendations of the engineer, architect, or building inspector that were not adopted by the local agency.

(4) The local agency shall file a copy of the approved graduated compliance plan with the California Building Standards Commission.

(h) (1) Five years after the beginning of the period for graduated compliance specified in subdivision (b), the local agency shall arrange for an engineer, architect, or building inspector to determine whether the buildings or other structures adhere to the graduated compliance plan. The engineer or architect shall be licensed by the State of California and the building inspector shall be certified by the International Conference of Building Officials or another similar recognized state, national, or international association. The engineer, architect, or building inspector shall not be an employee of the local agency.

(2) If the engineer, architect, or building inspector determines that the building or other structure does not adhere to the graduated compliance plan, the local building official shall initiate appropriate proceedings to withdraw the certificate of occupancy for that building or structure.

(i) Nothing in this section affects the requirement of state consent to retrocession pursuant to Section 113 of the Government Code.

(j) As used in this section, ''local agency'' means a city, county, or city and county. When authorized by state law or local ordinance to adopt and administer building and fire safety codes and standards, a community redevelopment agency, a reuse entity, or a joint powers agency may also be a ''local agency'' for the purposes of this section.

(k) Any taxpayer, property owner, resident, or public agency has standing to enforce the provisions of this section.

(*l*) Nothing in this section shall affect local, state, or federal laws as they relate to access to the disabled.

(m) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 2. The Legislature finds and declares that, because of the unique circumstances applicable only to the Oakland Army 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.

CHAPTER 419

An act to amend Sections 13961.1 and 13965 of the Government Code, relating to victims of crime, and making an appropriation therefor.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 13961.1 of the Government Code is amended to read:

13961.1. (a) An emergency award shall be available for a victim or derivative victim if any of the following occur as a result of the crime:

(1) The victim incurs loss of income or the derivative victim incurs loss of support.

(2) The victim requires emergency medical treatment.

(3) The victim dies as a result of the crime and any individual, without anticipation of personal gain, incurs the funeral and burial expense.

(4) The victim is a victim of sexual assault or domestic violence in need of those relocation expenses authorized by paragraph (4) of subdivision (a) of Section 13965.

(b) Emergency award application forms shall be provided by the board upon request of the applicant. The board shall make available the application forms through all means at its disposal.

(c) The board may grant an emergency award based solely on the application of the victim or derivative victim. Disbursements of funds for emergency awards shall be made within 30 business days of application. The board may refuse to grant an emergency award where it has reason to believe that the applicant will not qualify for an award for assistance under this article. The board may delegate authority to designated staff persons and local agencies, including, but not limited to, district attorneys, probation departments, and local victim witness centers, who will use guidelines established by the board, to grant and disburse emergency awards. By mutual agreement between the staff of the board and the applicant or the applicant's representative, the staff of the board or the applicant's representative may take additional 10-day periods to verify the emergency award claim and make payment.

(d) An applicant for an emergency award is not entitled to a hearing before the board to contest a denial of an emergency award. However, the applicant may submit an application for a regular award and is entitled to a hearing pursuant to Section 13963 if that application is recommended for denial.

(e) The application for an emergency award shall notify the applicant that he or she must complete the regular application within one year of the date of the crime.

(f) If upon final disposition of the regular application, it is found that the applicant is not eligible for assistance from the board, the applicant shall reimburse the board for the emergency award pursuant to an agreed upon repayment schedule. If upon a final disposition of the application, the board grants assistance to the applicant, the amount of the emergency award shall be deducted from the final award of compensation granted. If the amount of the grant is less than the amount of the emergency award, the excess amount shall be repaid according to an agreed upon repayment schedule. Final disposition for the purposes of this section shall mean the final decision of the board with respect to the victim's or derivative victim's application for assistance, before any appellate action is instituted. If an application for an emergency award is denied, the board shall notify the applicant in writing of the reasons for the denial.

(g) The amount of the emergency award shall be dependent upon the immediate needs of the victim or derivative victim, as evidenced by the victim's loss of income or the derivative victim's loss of support, the funeral and burial expenses incurred on behalf of the victim, and other losses incurred as a direct result of the crime before filing or reasonably anticipated during the first 90 days after the initial filing of an application. Except for applications filed pursuant to paragraph (3) of subdivision (a), in no event shall the amount of the emergency award exceed two thousand dollars ($2,000). Where an application has been

filed pursuant to paragraph (3) of subdivision (a), the amount of the emergency award shall not exceed five thousand dollars ($5,000).

(h) The emergency award application shall require only the following:

(1) The name, address, and telephone number of the victim or derivative victim on whose behalf the application is made.

(2) A brief description of the nature and circumstances of the crime, including the date and location.

(3) The date the crime was reported to a law enforcement agency and the name and address of the agency.

(4) The name, address, and telephone number of the employer or self-employing entity, the loss of income or support to date and estimate of future loss.

(5) The nature of the injury and the name, address, and telephone number of medical providers and the cost of medical care incurred to date.

(6) The name, address, and telephone number of the funeral and burial providers and the cost of funeral and burial expenses incurred to date.

(7) A statement that in the event the applicant is later found ineligible for assistance under this article or the final award is less than the emergency award, the applicant will be required to repay the excess amount.

(8) The applicant's signature and a statement that the information is supplied under penalty of perjury, violation of which is punishable by six months in the county jail.

(i) Where an application has been filed pursuant to paragraph (3) of subdivision (a), the application for the emergency award shall additionally contain the following:

(1) A statement that in the event the applicant receives reimbursement from another source, including, but not limited to, court-ordered restitution or life insurance, either in whole or in part for the funeral and burial expenses incurred on behalf of the victim, that the applicant will be required to repay the board.

(2) A complete copy of the report regarding the incident and any supplemental reports involving the crime, public offense, or incident giving rise to the claim, as prepared by a law enforcement agency pursuant to subdivision (d) of Section 13968. This report may, at the discretion of the law enforcement agency and as provided in subdivision (e) of Section 13968, exclude the names of witnesses or informants, if the release of this information would be detrimental to the parties or to an investigation currently in progress.

SEC. 2. Section 13965 of the Government Code, as amended by Section 5 of Chapter 1016 of the Statutes of 2000, is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may take any or all of the following actions:

(1) Reimburse the following persons for the expense of their outpatient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim, as defined in subparagraph (A), (B), (C), or (D) of paragraph (2) of subdivision (a) of Section 13960, who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars ($3,000), provided that mental health counseling of a derivative victim under subparagraph (E) of paragraph (2) of subdivision (a) of Section 13960 shall be reimbursed only if that counseling is necessary for the treatment of the victim.

(E) A victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code in an amount not to exceed three thousand dollars ($3,000) for mental health counseling expenses only. A derivative victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not be eligible for reimbursement of mental health counseling expenses.

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the victim or the derivative victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a

direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape crisis center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim or derivative victim equal to the pecuniary loss resulting from loss of wages pursuant to Section 13965.1.

(3) Authorize a cash payment to a derivative victim for loss of support pursuant to Section 13965.1.

(4) (A) Authorize a cash payment or reimbursement not to exceed two thousand dollars ($2,000) to a victim of sexual assault or domestic violence for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim. These expenses may include, but need not be limited to, all of the following:

(i) Deposits for utilities and telephone service.

(ii) Deposits for rental housing, not to exceed the first and last month's rent or two thousand dollars ($2,000), whichever is less.

(iii) Temporary lodging and food expenses, not to exceed one thousand dollars ($1,000).

(iv) Clothing and other personal items, not to exceed five hundred dollars ($500).

(B) The board shall develop procedures to ensure that the victim is using the cash payment only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, lease agreements, or other documents as requested, or developing a method for direct payment to the landlord or vendor.

(C) When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence, the victim shall agree to not inform the offender, if the identity of the offender is known to the victim, of the location of the victim's new residence and to not allow the offender, if the identity of the offender is known to the victim, on the premises at any time, or shall agree to seek a restraining order against the offender, if the identity of the offender is known to the victim.

(D) The board may authorize a cash payment or reimbursement pursuant to this paragraph to victims of crimes other than domestic violence if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(E) The cash payment or reimbursement made under this paragraph shall only be awarded once to any victim, except that the board may, under compelling circumstances, award a second cash payment or reimbursement to the same victim if both of the following conditions are met:

(i) The crime or series of crimes occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(ii) The crime does not involve the same perpetrator.

(5) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(6) (A) In the case of a victim of a crime that occurred in the victim's residence, authorize reimbursement for the expense for installing or increasing residential security, not to exceed one thousand dollars ($1,000). Installing or increasing residential security may include, but need not be limited to, both of the following:

(i) Home security device or system.

(ii) Replacing or increasing the number of locks.

(B) Reimbursement under this paragraph shall be made upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(C) The board shall develop procedures to ensure that the victim is using the reimbursement only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(7) (A) In the case of a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total, authorize a reimbursement for the expense of renovating or retrofitting his or her residence or vehicle, or both, to make the residence accessible or the

vehicle operational by the victim. Reimbursement shall be made upon verification that the expense is medically necessary. Payment for these purposes shall not exceed five thousand dollars ($5,000), except that the board may award a greater amount when justified by the disability of the victim.

(B) The board shall develop procedures to ensure that reimbursement is made only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(8) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(9) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(10) The total award to or on behalf of the victim or a derivative victim shall not exceed thirty-five thousand dollars ($35,000), and may be increased only in accordance with this section.

(11) If the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(12) The board may authorize a direct cash payment to a provider of services that are reimbursable pursuant to this article. However, the board may not, without good cause, authorize a direct cash payment to a provider over the objection of the victim or applicant.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the victim's or

derivative victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in paragraph (10) of subdivision (a) shall be increased to seventy thousand dollars ($70,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) (1) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health and counseling services, rates

shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

(2) To assure service limitations that are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority that the board may have under current law except as explicitly provided in this section.

(*l*) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993, a person has incurred mental health counseling expenses pursuant to this article in excess of one-half of the amount specified in that subdivision, the board may award, in addition to amounts awarded for previously incurred expenses, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

(o) The total award to or on behalf of a victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not exceed three thousand dollars ($3,000) for mental health counseling expenses only.

(p) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 2.5. Section 13965 of the Government Code, as amended by Section 5 of Chapter 1016 of the Statutes of 2000, is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may take any or all of the following actions:

(1) Reimburse the following persons for the expense of their outpatient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim, as defined in subparagraph (A), (B), (C), or (D) of paragraph (2) of subdivision (a) of Section 13960, who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars ($3,000), provided that mental health counseling of a derivative victim under subparagraph (E) of paragraph (2) of subdivision (a) of Section 13960 shall be reimbursed only if that counseling is necessary for the treatment of the victim.

(E) A victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code in an amount not to exceed three thousand dollars ($3,000) for mental health counseling expenses only. A derivative victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not be eligible for reimbursement of mental health counseling expenses.

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the

victim or the derivative victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape crisis center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim or derivative victim equal to the pecuniary loss resulting from loss of wages pursuant to Section 13965.1.

(3) Authorize a cash payment to a derivative victim for loss of support pursuant to Section 13965.1.

(4) (A) Authorize a cash payment or reimbursement not to exceed two thousand dollars ($2,000) to a victim of sexual assault or domestic violence for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim. These expenses may include, but need not be limited to, all of the following:

(i) Deposits for utilities and telephone service.

(ii) Deposits for rental housing, not to exceed the first and last month's rent and a security deposit or two thousand dollars ($2,000), whichever is less.

(iii) Temporary lodging and food expenses, not to exceed one thousand dollars ($1,000).

(iv) Clothing and other personal items, not to exceed five hundred dollars ($500).

(B) The board shall develop procedures to ensure that the victim is using the cash payment only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, lease agreements, or other documents as requested, or developing a method for direct payment to the landlord or vendor.

(C) When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence, the victim shall agree to not inform the offender, if the identity of the offender is known to the victim, of the location of the victim's new residence and to not allow the offender, if the identity of the offender is known to the victim, on the premises at any time, or shall agree to seek a restraining order against the offender, if the identity of the offender is known to the victim.

(D) The board may authorize a cash payment or reimbursement pursuant to this paragraph to victims of crimes other than domestic violence if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(E) The cash payment or reimbursement made under this paragraph shall only be awarded once to any victim, except that the board may, under compelling circumstances, award a second cash payment or reimbursement to the same victim if both of the following conditions are met:

(i) The crime or series of crimes occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(ii) The crime does not involve the same perpetrator.

(5) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(6) (A) In the case of a victim of a crime that occurred in the victim's residence, authorize reimbursement for the expense for installing or increasing residential security, not to exceed one thousand dollars ($1,000). Installing or increasing residential security may include, but need not be limited to, both of the following:

(i) Home security device or system.

(ii) Replacing or increasing the number of locks.

(B) Reimbursement under this paragraph shall be made upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(C) The board shall develop procedures to ensure that the victim is using the reimbursement only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(7) (A) In the case of a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total, authorize a reimbursement for the expense of renovating or retrofitting his or her residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle operational by the victim. Reimbursement shall be made upon verification that the expense is medically necessary.

(B) The board shall develop procedures to ensure that reimbursement is made only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(8) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(9) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(10) The total award to or on behalf of the victim or a derivative victim shall not exceed thirty-five thousand dollars ($35,000), and may be increased only in accordance with this section.

(11) If the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(12) The board may authorize a direct cash payment to a provider of services that are reimbursable pursuant to this article. However, the board may not, without good cause, authorize a direct cash payment to a provider over the objection of the victim or applicant.

(13) When a victim dies as a result of a crime and the crime occurs in a residence, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay the reasonable costs to clean the scene of the crime in an amount not to exceed one thousand dollars ($1,000). Services reimbursed pursuant to this subdivision shall be performed by persons registered with the State Department of Health Services as trauma scene waste practitioners in accordance with Chapter 9.5 (commencing with Section 118321) of Part 14 of Division 104 of the Health and Safety Code.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the victim's or derivative victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in paragraph (10) of subdivision (a) shall be increased to seventy thousand dollars ($70,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments

authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) (1) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health and counseling services, rates shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

(2) To assure service limitations that are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority that the board may have under current law except as explicitly provided in this section.

(*l*) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993, a person has incurred mental health counseling expenses pursuant to this article in excess of one-half of the amount specified in that subdivision, the board may award, in addition to amounts awarded for previously incurred expenses, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

(o) The total award to or on behalf of a victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not exceed three thousand dollars ($3,000) for mental health counseling expenses only.

(p) 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. 3. Section 13965 of the Government Code, as added by Section 6 of Chapter 1016 of the Statutes of 2000, is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may take any or all of the following actions:

(1) Reimburse the following persons for the expense of their outpatient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars ($3,000).

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the victim or the derivative victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim or derivative victim equal to the pecuniary loss resulting from loss of wages pursuant to Section 13965.1.

(3) Authorize a cash payment to a derivative victim for loss of support pursuant to Section 13965.1.

(4) (A) Authorize a cash payment or reimbursement not to exceed two thousand dollars ($2,000) to a victim of sexual assault or domestic violence for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim. These expenses may include, but need not be limited to, all of the following:

(i) Deposits for utilities and telephone service.

(ii) Deposits for rental housing, not to exceed the first and last month's rent or two thousand dollars ($2,000), whichever is less.

(iii) Temporary lodging and food expenses, not to exceed one thousand dollars ($1,000).

(iv) Clothing and other personal items, not to exceed five hundred dollars ($500).

(B) The board shall develop procedures to ensure that the victim is using the cash payment only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, lease agreements, or other documents as requested, or developing a method of direct payment to the landlord or vendor.

(C) When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence, the victim shall agree to not inform the offender, if the identity of the offender is known to the victim, of the location of the victim's new residence and to not allow the offender, if the identity of the offender is known to the victim, on the premises at any time, or shall agree to seek a restraining order against the offender, if the identity of the offender is known to the victim.

(D) The board may authorize a cash payment or reimbursement pursuant to this paragraph to victims of crimes other than domestic violence if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(E) The cash payment or reimbursement made under this paragraph shall only be awarded once to any victim, except that the board may, under compelling circumstances, award a second cash payment or reimbursement to the same victim if both of the following conditions are met:

(i) The crime or series of crimes occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(ii) The crime does not involve the same perpetrator.

(5) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(6) (A) In the case of a victim of a crime that occurred in the victim's residence, authorize reimbursement for the expense for installing or increasing residential security, not to exceed one thousand dollars ($1,000). Installing or increasing residential security may include, but need not be limited to, both of the following:

(i) Home security device or system.

(ii) Replacing or increasing the number of locks.

(B) Reimbursement under this paragraph shall be made upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(C) The board shall develop procedures to ensure that the victim is using the reimbursement only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(7) (A) In the case of a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total, authorize reimbursement for the expense of renovating or retrofitting his or her residence or vehicle, or both, to make the residence accessible or the vehicle operational by the victim. Reimbursement shall be made upon verification that the expense is medically necessary. Payment for these purposes shall not exceed five thousand dollars ($5,000), except that the board may award a greater amount when justified by the disability of the victim.

(B) The board shall develop procedures to ensure that reimbursement is made only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(8) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(9) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(10) The total award to or on behalf of the victim or a derivative victim shall not exceed thirty-five thousand dollars ($35,000), and may be increased only in accordance with this section.

(11) If the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon the request

of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(12) The board may authorize a direct cash payment to a provider of services that are reimbursable pursuant to this article. However, the board may not, without good cause, authorize a direct cash payment to a provider over the objection of the victim or applicant.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the victim's or derivative victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in paragraph (7) of subdivision (a) shall be increased to seventy thousand dollars ($70,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) (1) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health and counseling services, rates shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

(2) To assure service limitations that are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority that the board may have under current law except as explicitly provided in this section.

(*l*) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993, a person has incurred mental health counseling expenses pursuant to this article in excess of one-half of the amount specified in that subdivision, the board may award, in addition to amounts awarded for previously incurred expenses, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

(o) This section shall become operative on January 1, 2004.

SEC. 3.5. Section 13965 of the Government Code, as amended by Section 6 of Chapter 1016 of the Statutes of 2000, is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may take any or all of the following actions:

(1) Reimburse the following persons for the expense of their outpatient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars ($3,000).

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the victim or the derivative victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services,

including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim or derivative victim equal to the pecuniary loss resulting from loss of wages pursuant to Section 13965.1.

(3) Authorize a cash payment to a derivative victim for loss of support pursuant to Section 13965.1.

(4) (A) Authorize a cash payment or reimbursement not to exceed two thousand dollars ($2,000) to a victim of sexual assault or domestic violence for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim. These expenses may include, but need not be limited to, all of the following:

(i) Deposits for utilities and telephone service.

(ii) Deposits for rental housing, not to exceed the first and last month's rent and a security deposit or two thousand dollars ($2,000), whichever is less.

(iii) Temporary lodging and food expenses, not to exceed one thousand dollars ($1,000).

(iv) Clothing and other personal items, not to exceed five hundred dollars ($500).

(B) The board shall develop procedures to ensure that the victim is using the cash payment only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, lease agreements, or other documents as requested, or developing a method of direct payment to the landlord or vendor.

(C) When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence, the victim shall agree to not inform the offender, if the identity of the offender is known to the victim, of the location of the victim's new residence and to not allow the offender, if the identity of the offender is known to the victim, on the premises at any time, or shall agree to seek a restraining order against the offender, if the identity of the offender is known to the victim.

(D) The board may authorize a cash payment or reimbursement pursuant to this paragraph to victims of crimes other than domestic violence if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(E) The cash payment or reimbursement made under this paragraph shall only be awarded once to any victim, except that the board may, under compelling circumstances, award a second cash payment or reimbursement to the same victim if both of the following conditions are met:

(i) The crime or series of crimes occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(ii) The crime does not involve the same perpetrator.

(5) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(6) (A) In the case of a victim of a crime that occurred in the victim's residence, authorize reimbursement for the expense for installing or increasing residential security, not to exceed one thousand dollars ($1,000). Installing or increasing residential security may include, but need not be limited to, both of the following:

(i) Home security device or system.

(ii) Replacing or increasing the number of locks.

(B) Reimbursement under this paragraph shall be made upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(C) The board shall develop procedures to ensure that the victim is using the reimbursement only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of

receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(7) (A) In the case of a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total, authorize reimbursement for the expense of renovating or retrofitting his or her residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle operational by the victim. Reimbursement shall be made upon verification that the expense is medically necessary.

(B) The board shall develop procedures to ensure that reimbursement is made only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(8) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(9) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(10) The total award to or on behalf of the victim or a derivative victim shall not exceed thirty-five thousand dollars ($35,000), and may be increased only in accordance with this section.

(11) If the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(12) The board may authorize a direct cash payment to a provider of services that are reimbursable pursuant to this article. However, the board may not, without good cause, authorize a direct cash payment to a provider over the objection of the victim or applicant.

(13) When a victim dies as a result of a crime and the crime occurs in a residence, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the reasonable costs to clean the scene of the crime in an amount

not to exceed one thousand dollars ($1,000). Services reimbursed pursuant to this subdivision shall be performed by persons registered with the State Department of Health Services as trauma scene waste practitioners in accordance with Chapter 9.5 (commencing with Section 118321) of Part 14 of Division 104 of the Health and Safety Code.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the victim's or derivative victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in paragraph (10) of subdivision (a) shall be increased to seventy thousand dollars ($70,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within

an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) (1) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health and counseling services, rates shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

(2) To assure service limitations that are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority that the board may have under current law except as explicitly provided in this section.

(*l*) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in

excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993, a person has incurred mental health counseling expenses pursuant to this article in excess of one-half of the amount specified in that subdivision, the board may award, in addition to amounts awarded for previously incurred expenses, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

(o) This section shall become operative on January 1, 2004.

SEC. 4. (a) Section 2.5 of this bill incorporates amendments to Section 13965 of the Government Code, as amended by Section 5 of Chapter 1016 of the Statutes of 2000, proposed by both this bill and AB 1017. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 13965 of the Government Code, as amended by Section 5 of Chapter 1016 of the Statutes of 2000, and (3) this bill is enacted after AB 1017, in which case Section 2 of this bill shall not become operative.

(b) Section 3.5 of this bill incorporates amendments to Section 13965 of the Government Code, as amended by Section 6 of Chapter 1016 of the Statutes of 2000, proposed by both this bill and AB 1017. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 13965 of the Government Code, as amended by Section 6 of Chapter 1016 of the Statutes of 2000, and (3) this bill is enacted after AB 1019, in which case Section 3 of this bill shall not become operative.

CHAPTER 420

An act to amend Section 1010 of the Evidence Code, to add and repeal Section 13960.7 of the Government Code, to amend Sections 1373 and 1373.8 of the Health and Safety Code, and to amend Sections 10176 and 10177 of the Insurance Code, relating to nursing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 1010 of the Evidence Code is amended to read:

1010. As used in this article, ''psychotherapist'' means:

(a) A person authorized, or reasonably believed by the patient to be authorized, to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of his or her time to the practice of psychiatry.

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(c) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code, when he or she is engaged in applied psychotherapy of a nonmedical nature.

(d) A person who is serving as a school psychologist and holds a credential authorizing that service issued by the state.

(e) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(f) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code, or a person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(g) A person registered as an associate clinical social worker who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist as required by Section 4996.20 of the Business and Professions Code.

(h) A person exempt from the Psychology Licensing Law pursuant to subdivision (d) of Section 2909 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.

(i) A psychological intern as defined in Section 2911 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.

(j) A trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, who is fulfilling his or her supervised practicum required by subdivision (b) of Section 4980.40 of the Business and Professions Code and is supervised by a licensed

psychologist, board certified psychiatrist, a licensed clinical social worker, or a licensed marriage, family, and child counselor.

(k) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing.

(*l*) An advanced practice registered nurse who is certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code and who participates in expert clinical practice in the specialty of psychiatric-mental health nursing.

(m) A person rendering mental health treatment or counseling services as authorized pursuant to Section 6924 of the Family Code.

SEC. 1.5. Section 1010 of the Evidence Code is amended to read:

1010. As used in this article, ''psychotherapist'' means a person who is, or is reasonably believed by the patient to be:

(a) A person authorized to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of his or her time to the practice of psychiatry.

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(c) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code, when he or she is engaged in applied psychotherapy of a nonmedical nature.

(d) A person who is serving as a school psychologist and holds a credential authorizing that service issued by the state.

(e) A person licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(f) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code, or a person registered as a marriage and family therapist intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(g) A person registered as an associate clinical social worker who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist as required by Section 4996.20 or 4996.21 of the Business and Professions Code.

(h) A person exempt from the Psychology Licensing Law pursuant to subdivision (d) of Section 2909 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.

(i) A psychological intern as defined in Section 2911 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.

(j) A trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, who is fulfilling his or her supervised practicum required by subdivision (b) of Section 4980.40 of the Business and Professions Code and is supervised by a licensed psychologist, board certified psychiatrist, a licensed clinical social worker, or a licensed marriage and family therapist.

(k) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing.

(*l*) An advanced practice registered nurse who is certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code and who participates in expert clinical practice in the specialty of psychiatric-mental health nursing.

(m) A person rendering mental health treatment or counseling services as authorized pursuant to Section 6924 of the Family Code.

SEC. 2. Section 13960.7 is added to the Government Code, to read:

13960.7. (a) As used in this article, ''pecuniary loss'' also means the amount of counseling related expenses as specified in paragraph (2) of subdivision (d) of Section 13960, provided by either of the following for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing.

(2) An advanced practice registered nurse certified as a clinical nurse specialist under Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code, who participates in expert clinical practice in the specialty of psychiatric-mental health nursing.

(b) This section shall become inoperative and is repealed on January 1, 2002, if Assembly Bill 1017 of the 2001–02 Regular Session is enacted and becomes effective on or before that date.

SEC. 3. Section 1373 of the Health and Safety Code is amended to read:

1373. (a) A plan contract may not provide an exception for other coverage if the other coverage is entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

Each plan contract shall be interpreted not to provide an exception for the Medi-Cal or medicaid benefits.

A plan contract shall not provide an exemption for enrollment because of an applicant's entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

A plan contract may not provide that the benefits payable thereunder are subject to reduction if the individual insured has entitlement to the Medi-Cal or medicaid benefits.

(b) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for sterilization operations or procedures shall not impose any disclaimer, restriction on, or limitation of, coverage relative to the covered individual's reason for sterilization.

As used in this section, ''sterilization operations or procedures'' shall have the same meaning as that specified in Section 10120 of the Insurance Code.

(c) Every plan contract that provides coverage to the spouse or dependents of the subscriber or spouse shall grant immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any subscriber or spouse covered and to each minor child placed for adoption from and after the date on which the adoptive child's birth parent or other appropriate legal authority signs a written document, including, but not limited to, a health facility minor release report, a medical authorization form, or a relinquishment form, granting the subscriber or spouse the right to control health care for the adoptive child or, absent this written document, on the date there exists evidence of the subscriber's or spouse's right to control the health care of the child placed for adoption. No plan may be entered into or amended if it contains any disclaimer, waiver, or other limitation of coverage relative to the coverage or insurability of newborn infants of, or children placed for adoption with, a subscriber or spouse covered as required by this subdivision.

(d) Every plan contract that provides that coverage of a dependent child of a subscriber shall terminate upon attainment of the limiting age for dependent children specified in the plan, shall also provide in substance that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of the incapacity and dependency is furnished to the plan by the member within 31 days of the request for the information by the plan or group plan contractholder and subsequently as may be required by the plan or group plan contractholder, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(e) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for both an employee and one or more covered persons dependent upon the employee and provides for an extension of the coverage for any period following a termination of employment of the employee shall also provide that this extension of coverage shall apply to dependents upon the same terms and conditions precedent as applied to the covered employee, for the same period of time, subject to payment of premiums, if any, as required by the terms of the policy and subject to any applicable collective bargaining agreement.

(f) A group contract shall not discriminate against handicapped persons or against groups containing handicapped persons. Nothing in this subdivision shall preclude reasonable provisions in a plan contract against liability for services or reimbursement of the handicap condition or conditions relating thereto, as may be allowed by rules of the director.

(g) Every group contract shall set forth the terms and conditions under which subscribers and enrollees may remain in the plan in the event the group ceases to exist, the group contract is terminated or an individual subscriber leaves the group, or the enrollees' eligibility status changes.

(h) (1) A health care service plan or specialized health care service plan may provide for coverage of, or for payment for, professional mental health services, or vision care services, or for the exclusion of these services. If the terms and conditions include coverage for services provided in a general acute care hospital or an acute psychiatric hospital as defined in Section 1250 and do not restrict or modify the choice of providers, the coverage shall extend to care provided by a psychiatric health facility as defined in Section 1250.2 operating pursuant to licensure by the State Department of Mental Health. A health care service plan that offers outpatient mental health services but does not cover these services in all of its group contracts shall communicate to

prospective group contractholders as to the availability of outpatient coverage for the treatment of mental or nervous disorders.

(2) No plan shall prohibit the member from selecting any psychologist who is licensed pursuant to the Psychology Licensing Law (Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code), any optometrist who is the holder of a certificate issued pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code or, upon referral by a physician and surgeon licensed pursuant to the Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code), (i) any marriage, family, and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, (ii) any licensed clinical social worker who is the holder of a license under Section 4996 of the Business and Professions Code, (iii) any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing, or (iv) any advanced practice registered nurse certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, to perform the particular services covered under the terms of the plan, and the certificate holder is expressly authorized by law to perform these services.

(3) Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training and experience.

(4) For the purposes of this section, ''marriage, family, and child counselor'' means a licensed marriage, family, and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

(5) Nothing in this section shall be construed to allow a member to select and obtain mental health or psychological or vision care services from a certificate or license holder who is not directly affiliated with or under contract to the health care service plan or specialized health care service plan to which the member belongs. All health care service plans and individual practice associations that offer mental health benefits shall make reasonable efforts to make available to their members the services of licensed psychologists. However, a failure of a plan or

association to comply with the requirements of the preceding sentence shall not constitute a misdemeanor.

(6) As used in this subdivision, ''individual practice association'' means an entity as defined in subsection (5) of Section 1307 of the federal Public Health Service Act (42 U.S.C. Sec. 300e-1, subsec. (5)).

(7) Health care service plan coverage for professional mental health services may include community residential treatment services that are alternatives to inpatient care and that are directly affiliated with the plan or to which enrollees are referred by providers affiliated with the plan.

(i) If the plan utilizes arbitration to settle disputes, the plan contracts shall set forth the type of disputes subject to arbitration, the process to be utilized, and how it is to be initiated.

(j) A plan contract that provides benefits that accrue after a certain time of confinement in a health care facility shall specify what constitutes a day of confinement or the number of consecutive hours of confinement that are requisite to the commencement of benefits.

SEC. 4. Section 1373.8 of the Health and Safety Code is amended to read:

1373.8. A health care service plan contract where the plan is licensed to do business in this state and the plan provides coverage that includes California residents but that may be written or issued for delivery outside of California and where benefits are provided within the scope of practice of a licensed clinical social worker, a registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing, an advanced practice registered nurse who is certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, or a marriage, family, and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, shall not be deemed to prohibit persons covered under the contract from selecting those licensed persons in California to perform the services in California that are within the terms of the contract even though the licensees are not licensed in the state where the contract is written or issued for delivery.

It is the intent of the Legislature in amending this section in the 1984 portion of the 1983–84 Legislative Session that persons covered by the contract and those providers of health care specified in this section who are licensed in California should be entitled to the benefits provided by the plan for services of those providers rendered to those persons.

SEC. 5. Section 10176 of the Insurance Code is amended to read:

10176. In disability insurance, the policy may provide for payment of medical, surgical, chiropractic, physical therapy, speech pathology, audiology, acupuncture, professional mental health, dental, hospital, or optometric expenses upon a reimbursement basis, or for the exclusion of any of those services, and provision may be made therein for payment of all or a portion of the amount of charge for these services without requiring that the insured first pay the expenses. The policy shall not prohibit the insured from selecting any psychologist or other person who is the holder of a certificate or license under Section 1000, 1634, 2050, 2472, 2553, 2630, 2948, 3055, or 4938 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, the certificate holder or licensee being expressly authorized by law to perform those services.

If the insured selects any person who is a holder of a certificate under Section 4938 of the Business and Professions Code, a disability insurer or nonprofit hospital service plan shall pay the bona fide claim of an acupuncturist holding a certificate pursuant to Section 4938 of the Business and Professions Code for the treatment of an insured person only if the insured's policy or contract expressly includes acupuncture as a benefit and includes coverage for the injury or illness treated. Unless the policy or contract expressly includes acupuncture as a benefit, no person who is the holder of any license or certificate set forth in this section shall be paid or reimbursed under the policy for acupuncture.

Nor shall the policy prohibit the insured, upon referral by a physician and surgeon licensed under Section 2050 of the Business and Professions Code, from selecting any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any occupational therapist as specified in Section 2570.2 of the Business and Professions Code, or any marriage, family and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, or from selecting any speech-language pathologist or audiologist licensed under Section 2532 of the Business and Professions Code or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing or any advanced practice registered nurse certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, or any respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and

Professions Code to perform services deemed necessary by the referring physician, that certificate holder, licensee or otherwise regulated person, being expressly authorized by law to perform the services.

Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training, and experience. For the purposes of this section, ''marriage, family and child counselor'' means a licensed marriage, family and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions that is equivalent to the instruction required for licensure on January 1, 1981.

An individual disability insurance policy, which is issued, renewed, or amended on or after January 1, 1988, which includes mental health services coverage may not include a lifetime waiver for that coverage with respect to any applicant. The lifetime waiver of coverage provision shall be deemed unenforceable.

SEC. 6. Section 10177 of the Insurance Code is amended to read:

10177. A self-insured employee welfare benefit plan may provide for payment of professional mental health expenses upon a reimbursement basis, or for the exclusion of those services, and provision may be made therein for payment of all or a portion of the amount of charge for those services without requiring that the employee first pay those expenses. The plan shall not prohibit the employee from selecting any psychologist who is the holder of a certificate issued under Section 2948 of the Business and Professions Code or, upon referral by a physician and surgeon licensed under Section 2135 of the Business and Professions Code, any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any marriage, family, and child counselor who is the holder of a certificate or license under Section 4980.50 of the Business and Professions Code, or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing or any advanced practice registered nurse certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, to perform the particular services covered under the terms of the plan, the certificate or license holder being expressly authorized by law to perform these services.

Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional services beyond his or her field or fields of competence as established by his or her education, training, and experience. For the purposes of this section, ''marriage, family, and child counselor'' shall mean a licensed marriage, family, and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

A self-insured employee welfare benefit plan, which is issued, renewed, or amended on or after January 1, 1988, that includes mental health services coverage in nongroup contracts may not include a lifetime waiver for that coverage with respect to any employee. The lifetime waiver of coverage provision shall be deemed unenforceable.

SEC. 7. Section 1.5 of this bill incorporates amendments to Section 1010 of the Evidence Code proposed by both this bill and SB 716. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, but this bill becomes operative first, (2) each bill amends Section 1010 of the Evidence Code, and (3) this bill is enacted after SB 716, in which case Section 1010 of the Evidence Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of SB 716, at which time Section 1.5 of this bill shall become operative.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The current shortage of registered nurses licensed to practice in this state requires the expansion of the scope of the description of this profession to include all nurses who are able to provide the services described in this act.

CHAPTER 421

An act to add and repeal Chapter 2.5 (commencing with Section 17250.10) of Part 10.5 of the Education Code, relating to public works.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Chapter 2.5 (commencing with Section 17250.10) is added to Part 10.5 of the Education Code, to read:

CHAPTER 2.5. DESIGN-BUILD CONTRACTS

17250.10. (a) It is the intent of the Legislature to enable school districts to utilize safe and cost-effective options for building and modernizing school facilities. The Legislature has recognized the merits of the design-build procurement process in the past by authorizing its use for projects undertaken by the University of California, specified local government projects, and state office buildings.

(b) The Legislature also finds and declares that school districts utilizing a design-build contract require a clear understanding of the roles and responsibilities of each participant in the design-build process. The benefits of a design-build contract project delivery system include an accelerated completion of the projects, cost containment, reduction of construction complexity, and reduced exposure to risk for the school district. The Legislature also finds that the cost-effective benefits to the school districts are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(c) It is the intent of the Legislature to provide an optional, alternative procedure for bidding and building school construction projects.

(d) In addition, it is the intent of the Legislature that the full scope of design, construction, and equipment awarded to a design-build entity shall be authorized in a single funding phase. The funding phase may be authorized concurrently with, or separately from, the phase that authorizes the creation of the performance criteria and concept drawings.

(e) It is the intent of the Legislature that design-build procurement as authorized by the act adding this chapter shall not be construed to extend, limit, or change in any manner the legal responsibility of public agencies and contractors to comply with existing laws.

17250.15. As used in this chapter, the following terms have the following meanings:

(a) ''Best value'' means a value determined by objective criteria and may include, but need not be limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the school district.

(b) ''Design-build'' means a procurement process in which both the design and construction of a project are procured from a single entity.

(c) ''Design-build entity'' means a corporation, limited partnership, partnership, or other association that is able to provide appropriately

licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

17250.20. Upon making a determination by a school district governing that it is in the best interest of the school district, the governing board may enter into a design-build contract for both the design and construction of a school facility if that expenditure exceeds ten million dollars ($10,000,000) if, after evaluation of the traditional design, bid, and build process of school construction and of the design-build process in a public meeting, the governing board makes written findings that use of the design-build process on the specific project under consideration will accomplish one of the following objectives: reduce comparable project costs, expedite the project's completion, or provide features not achievable through the traditional design-bid-build method. The governing board shall also review the guidelines developed pursuant to Section 17250.40 and shall adopt a resolution approving the use of a design-build contract pursuant to this article prior to entering into a design-build contract.

17250.25. Design-build projects shall progress as follows:

(a) (1) The school district governing board shall prepare a request for proposal setting forth the scope of the project that may include, but is not limited to, the size, type and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the school district's needs. The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state.

(2) Each request for proposal shall do all of the following:

(A) Identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the school district to inform interested parties of the contracting opportunity.

(B) Invite interested parties to submit competitive sealed proposals in the manner prescribed by the school district.

(C) Include a section identifying and describing the following:

(i) All significant factors and subfactors that the school district reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors.

(ii) The methodology and rating or weighting scheme that will be used by the school district governing board in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values.

(iii) The relative importance or weight assigned to each of the factors identified in the request for proposal.

(iv) As an alternative to clause (iii), the governing board of a school district shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following:

(I) Significantly more important than cost or price.

(II) Approximately equal in importance to cost or price.

(III) Significantly less important than cost or price.

(v) If the school district governing board wishes to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the school district to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

(3) Notwithstanding Section 4-315 of Title 24 of the California Code of Regulations, an architect or structural engineer who is party to a design-build entity may perform the services set forth in Section 17302.

(b) (1) The school district shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of the Department of Industrial Relations. In preparing the questionnaire, the director shall consult with the construction industry, including representatives of the building trades, surety industry, school districts, and other affected parties. This questionnaire shall require information including, but not limited to, all of the following:

(A) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members who will participate as subcontractors in the design-build contract, including, but not limited to, electrical and mechanical subcontractors.

(B) Evidence that the members of the design-build entity have completed, or demonstrated, the experience, competency, capability, and capacity to complete projects of similar size, scope or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.

(C) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(D) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement that assures the school district that the design-build entity has the capacity to complete the project.

(E) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) or the Federal

Occupational Safety and Health Act of 1970 (P.L. 91-596), settled against any member of the design-build entity, and information concerning a contractor member's workers' compensation experience history and worker safety program.

(F) Information concerning any debarment, disqualification, or removal from a federal, state or local government public works project.

(G) Any instance where an entity, its owners, officers, or managing employees, submitted a bid on a public works project and were found by an awarding body not to be a responsible bidder.

(H) Any instance where the entity, its owner, officers, or managing employees defaulted on a construction contract.

(I) Any prior violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements, settled against any member of the design-build entity.

(J) Information concerning the bankruptcy or receivership of any member of the entity, including information concerning any work completed by a surety.

(K) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five-year period preceding submission of the bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars ($50,000). Information shall also be provided concerning any work completed by a surety during this period.

(L) In the case of a partnership or other association that is not a legal entity, a copy of the agreement creating the partnership or association.

(2) The information required pursuant to this subdivision shall be verified under oath by the design-build entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code) shall not be open to public inspection.

(c) The school district shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(1) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Award shall be made on the basis of the lowest responsible bid.

(2) Notwithstanding any other provision of this code or of Section 20110 of the Public Contract Code, a school district may use a

design-build competition based upon performance and other criteria set forth by the governing board in the solicitation of proposals. Criteria used in this evaluation of proposals may include, but need not be limited to, the proposed design approach, life cycle costs, project features, and project functions. However, competitive proposals shall be evaluated by using the criteria and source selection procedures specifically identified in the request for proposal. Once the evaluation is complete, all responsive bidders shall be ranked from the most advantageous to least advantageous to the school district.

(A) Any architectural or engineering firm or individual retained by the governing body of the school district to assist in the development criteria or preparation of the request for proposal shall not be eligible to participate in the competition with the design-build entity.

(B) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing by the school district, to be the best value to the school district.

(C) Proposals shall be evaluated and scored solely on the basis of the factors and source selection procedures identified in the request for proposal. However, the following minimum factors shall collectively represent at least 50 percent of the total weight or consideration given to all criteria factors: price, technical expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(D) The school district governing board shall issue a written decision supporting its contract award and stating in detail the basis of the award. The decision and the contract file must be sufficient to satisfy an external audit.

(E) Notwithstanding any provision of the Public Contract Code, upon issuance of a contract award, the school district governing board shall publicly announce its awards identifying the contractor to whom the award is made, the winning contractor's price proposal and its overall combined rating on the request for proposal evaluation factors. The notice of award shall also include the agency's ranking in relation to all other responsive bidders and their respective price proposals and a summary of the school district's rationale for the contract award.

(F) For the purposes of this chapter, ''skilled labor force availability'' means that an agreement exists with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has not been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticable craft in the two years prior to enactment of this act.

(G) For the purposes of this chapter, a bidder's ''safety record'' shall be deemed ''acceptable'' if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category, or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

17250.30. (a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (i) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on school district design-build projects throughout the state.

(c) (1) All subcontracts that were not listed by the design-build entity in accordance with Section 17250.25 shall be awarded by the design-build entity.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the school district and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified

in the contract between the school district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) The school district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

17250.35. (a) The minimum performance criteria and design standards established pursuant to this chapter by a school district for quality, durability, longevity, and life cycle costs, and other criteria deemed appropriate by the school district shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the school district. The governing board may, and is strongly encouraged to, retain the services of an architect or structural engineer throughout the course of the project in order to ensure compliance with this chapter. Any architect or structural engineer retained pursuant to this subdivision shall be duly licensed and registered in California.

(b) The school district governing board shall be the employer of the inspector. The project inspector shall be fully independent from any member of the design-build entity and may not have any affiliation with any member of the design-build entity or any of the project subcontractors. The total price of the project shall be determined either upon receipt of the lump-sum bids as set forth in paragraph (1) of subdivision (c) of Section 17250.25, or by completion of the process pursuant to paragraph (2) of subdivision (c) of Section 17250.25.

(c) Each contract with a design-build entity shall provide that no construction or alteration of any school building pursuant to this section shall commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services. Compliance with this provision shall be deemed to be in compliance with Sections 17267 and 17297.

(d) The design-build entity shall be liable for building the facility to specifications set forth in the design-build contract in the absence of contractual language to the contrary.

17250.40. The Superintendent of Public Instruction shall, in consultation with the Secretary for Education, the Department of

General Services, the Energy Resources, Conservation and Development Commission, Seismic Safety Commission, school district representatives, and industry representatives, develop guidelines for design-build projects. The guidelines shall be developed within six months of the operative date of this chapter.

17250.45. Each school district governing board that adopts the design-build process for a school construction project shall submit to the Legislative Analyst a report on the project at the completion of the project. Completion shall have the same meaning as defined in subdivision (c) of Section 7107 of the Public Contract Code. This report shall be submitted within 60 days after completion of the project. The Legislative Analyst shall submit an interim report to the Legislature by January 1, 2004, and a final report to the Legislature by January 1, 2006. The reports shall include, but not be limited to, all of the following information as to each project:

(a) The type of facility.

(b) The gross square footage of the facility.

(c) The company or contractor who was awarded the project.

(d) The estimated and actual length of time to complete the project.

(e) The estimated and actual project cost.

(f) A description of the relative merits of a project procured pursuant to this chapter and similar projects procured pursuant to other provisions of this code.

(g) A description of any written protest concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protest.

(h) Other pertinent information that may be instructive in evaluating whether the design-build method of procurement should be continued, expanded, or prohibited.

(i) The findings established pursuant to Section 17250.20 and a post-completion evaluation as to whether the findings were achieved.

(j) Any Labor Code violations discovered during the course of construction or following completion of the project, as well as any fines or penalties assessed.

17250.50. A school district shall not commence any additional design-build projects if 60 days has elapsed after completion of a design-build project without having filed the report to the Legislative Analyst's Office required pursuant to Section 17250.45.

SEC. 2. This act does not exempt design-build contracts from otherwise applicable provisions of the Public Contract Code unless the exemption is granted expressly, or by necessary implication.

SEC. 3. Unless expressly authorized in this act, no otherwise applicable provision of the Field Act (Article 3 (commencing with Section 17365) of Chapter 3 of Part 10.5 of, and Article 7 (commencing

with Section 81130) of Chapter 1 of Part 49 of, the Education Code) may be waived, amended, or ignored by the school district or the design-build entity.

SEC. 4. This act shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 5. This act shall not apply to contracts in effect prior to the operative date of this act. Unless expressly set forth in this act, nothing in this act is intended to affect, expand, alter, or limit rights or remedies otherwise available at law.

CHAPTER 422

An act to amend Sections 17212.5 and 17295 of the Education Code, relating to school facilities.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 17212.5 of the Education Code is amended to read:

17212.5. Geological and soil engineering studies as described in Section 17212 shall be made, within the boundaries of any special studies zone, for the construction of any school building as defined in Section 17283, or if the estimated cost exceeds twenty-five thousand dollars ($25,000), for the reconstruction or alteration of or addition to any school building for work which alters structural elements. The Department of General Services may require similar geological and soil engineering studies for the construction or alteration of any school building on a site located outside of the boundaries of any special studies zone. No studies need be made if the site under consideration has been the subject of adequate prior studies.

No school building shall be constructed, reconstructed, or relocated on the trace of a geological fault along which surface rupture can reasonably be expected to occur within the life of the school building.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services pursuant to Article 3 (commencing with Section 17280) of this chapter and to the State Department of Education. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure. The dollar amount set

forth in this section shall be increased on an annual basis, according to a construction costs inflation index recognized and selected by the department.

SEC. 2. Section 17295 of the Education Code is amended to read:

17295. (a) (1) The Department of General Services shall pass upon and approve or reject all plans for the construction or, if the estimated cost exceeds twenty-five thousand dollars ($25,000), the alteration of any school building.

(2) To enable the Department of General Services to pass upon and approve plans pursuant to this subdivision, the governing board of each school district and any other school authority before adopting any plans for the school building shall submit the plans to the Department of General Services for approval, and shall pay the fees prescribed in this article.

(b) Notwithstanding subdivision (a) of Section 17295, where the estimated cost of the reconstruction or alteration of, or an addition to, any school building exceeds twenty-five thousand dollars ($25,000) but does not exceed one hundred thousand dollars ($100,000), a licensed structural engineer shall examine the proposed project to determine if it is a nonstructural alteration or a structural alteration. If he or she determines that the project is a nonstructural alteration, he or she shall prepare a statement so indicating. If he or she determines that the project is structural, he or she shall prepare plans and specifications for the project which shall be submitted to the Department of General Services for review and approval. A copy of the engineer's report stating that the work does not affect structural elements shall be filed with the Department of General Services.

(c) If a licensed structural engineer submits a report to the Department of General Services stating that the plans or activities authorized pursuant to subdivision (b) do not involve structural elements, then all of the following shall apply to that project:

(1) The design professional in responsible charge of the project undertaken pursuant to this subdivision shall certify that the plans and specifications for the project meet any applicable fire and life safety standards, and do not affect the disabled access requirements of Section 4450 of the Government Code, and shall submit this certification to the department. The letter of certification shall bear the identifying licensing stamp or seal of the design professional. This provision does not preclude a design professional from submitting plans and specifications to the department along with the appropriate fee for review.

(2) Within 10 days of the completion of any project authorized pursuant to subdivision (b), the school construction inspector of record on the project, who is certified by the department to inspect school buildings, shall certify in writing to the department that the

reconstruction, alteration, or addition has been completed in compliance with the plans and specifications.

(3) The dollar amounts cited in this section shall be increased on an annual basis, commencing January 1, 1999, by the department according to an inflationary index governing construction costs that is selected and recognized by the department.

(4) No school district shall subdivide a project for the purpose of evading the limitation on amounts cited in this section.

(d) For purposes of this section, ''design professional in responsible charge'' or ''design professional'' means the licensed architect, licensed structural engineer, or licensed civil engineer who is responsible for the completion of the design work involved with the project.

CHAPTER 423

An act to amend Section 19622.3 of the Business and Professions Code, to amend Sections 3332.1 and 4051.1 of, and to add Section 4051.2 to, the Food and Agricultural Code, relating to fairs.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 19622.3 of the Business and Professions Code is amended to read:

19622.3. (a) The authority of the Department of Food and Agriculture shall include, but is not limited to, requiring district agricultural associations to meet all applicable standards prescribed by the Department of Food and Agriculture.

(b) The department may delegate approval authority for such matters as the department may determine to the board of directors if the board complies with this section. The department shall report annually to the Joint Committee on Fairs Allocation and Classification the names of fairs that are delegated that authority.

(c) Notwithstanding any other provision of law, and in order to protect the integrity of the Fair and Exposition Fund, the department may assume any or all rights, duties, and powers of the board of directors of a district agricultural association if the department reasonably determines that there is insufficient fiscal or administrative control. The board of directors shall again exercise these rights, duties, and powers when the department determines that the fair is in compliance with this section. The department shall report annually to the Joint Committee on

Fairs Allocation and Classification the names of fairs with respect to which the department has taken the action prescribed in this subdivision and subdivision (d).

(d) The department may petition a court of competent jurisdiction for an order appointing the department, or a person designated by the department, as a receiver if it determines that the fair is insolvent, or is in imminent danger of insolvency. The court shall appoint a receiver upon a showing that the fair is insolvent, or is in imminent danger of insolvency.

(e) For the purposes of this section, ''insolvency'' means that the district agricultural association is unable to discharge its debts as they become due in the usual course of business.

SEC. 2. Section 3332.1 of the Food and Agricultural Code is amended to read:

3332.1. Notwithstanding any other provision of law and in accordance with procedures established by the board, the board may enter into agreements to secure donations, memberships, and corporate and individual sponsorships, and may enter into marketing and licensing agreements for the receipt of money, or services or products in lieu of money, and may employ an entity or individual, or create and participate in an entity, or enter into an agreement with an entity or person to develop, solicit, sell, and service these agreements. The compensation for the entity or person shall be established by the board.

SEC. 3. Section 4051.1 of the Food and Agricultural Code is amended to read:

4051.1. (a) Notwithstanding any other provision of law, in accordance with procedures established by the board, the board may enter into agreements to secure donations, memberships, and corporate and individual sponsorships, and may enter into marketing and licensing agreements for the receipt of money, or services or products in lieu of money, and may employ, or create and participate in an entity, or enter into an agreement with an entity or person to develop, solicit, sell, and service these agreements. The compensation for the entity or person shall be established by the board.

(b) Written notification to the department shall be required prior to creating an entity for the activities described in this section and prior to entering into any agreement for activities described in this section if the agreement exceeds one hundred thousand dollars ($100,000) in value, exists for a period of greater than two years, or contemplates the building of a permanent structure on fair property. The department may, upon reasonable notice, examine the books and records of any entity created pursuant to this section.

SEC. 4. Section 4051.2 is added to the Food and Agricultural Code, to read:

4051.2. An association shall not enter into a settlement agreement for an amount greater than ten thousand dollars ($10,000) without the prior approval of the department.

CHAPTER 424

An act to amend Section 41705 of the Health and Safety Code, and to amend Section 43209.1 of the Public Resources Code, relating to air pollution, declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 41705 of the Health and Safety Code, as amended by Section 1 of Chapter 788 of the Statutes of 1997, is amended to read:

41705. (a) Section 41700 does not apply to odors emanating from any of the following:

(1) Agricultural operations necessary for the growing of crops or the raising of fowl or animals.

(2) Operations that produce, manufacture, or handle compost, as defined in Section 40116 of the Public Resources Code, if the odors emanate directly from the compost facility or operations.

(3) Operations that compost green material or animal waste products derived from agricultural operations, and that return similar amounts of the compost produced to that same agricultural operations source, or to an agricultural operations source owned or leased by the owner, parent company, or subsidiary conducting the composting operation. The composting operation may produce an incidental amount of compost not exceeding 2,500 cubic yards of compost, which may be given away or sold annually.

(b) If a district receives a complaint pertaining to an odor emanating from a compost operation exempt from Section 41700 pursuant to paragraph (2) or (3) of subdivision (a), that is subject to the jurisdiction of an enforcement agency under Division 30 (commencing with Section 40000) of the Public Resources Code, the district shall, within 24 hours or by the next working day, refer the complaint to the enforcement agency.

(c) This section shall become inoperative on April 1, 2003, unless the California Integrated Waste Management Board adopts and submits regulations governing the operation of organic composting sites to the

Office of Administrative Law pursuant to subdivision (c) of Section 43209.1 on or prior to that date.

SEC. 2. Section 41705 of the Health and Safety Code, as amended by Section 2 of Chapter 788 of the Statutes of 1997, is amended to read:

41705. (a) Section 41700 shall not apply to odors emanating from agricultural operations necessary for the growing of crops or the raising of fowl or animals.

(b) This section shall become operative on April 1, 2003, unless the California Integrated Waste Management Board adopts and submits regulations governing the operation of organic composting sites to the Office of Administrative Law pursuant to subdivision (c) of Section 43209.1 on or prior to that date.

SEC. 3. Section 43209.1 of the Public Resources Code is amended to read:

43209.1. (a) Notwithstanding any other provision of law, if an enforcement agency receives a complaint, pursuant to subdivision (b) of Section 41705 of the Health and Safety Code, from an air pollution control district or an air quality management district pertaining to an odor emanating from a compost facility under its jurisdiction, the enforcement agency shall, in consultation with the district, take appropriate enforcement actions pursuant to this part.

(b) On or before April 1, 1998, the board shall convene a working group consisting of enforcement agencies and air pollution control districts and air quality management districts to assist in the implementation of this section and Section 41705 of the Health and Safety Code. On or before April 1, 1999, the board and the working group shall develop recommendations on odor measurement and thresholds, complaint response procedures, and enforcement tools and take any other action necessary to ensure that enforcement agencies respond in a timely and effective manner to complaints of odors emanating from composting facilities. On or before January 1, 2000, the board shall implement the recommendations of the working group that the board determines to be appropriate.

(c) On or before April 1, 2003, the board shall adopt and submit to the Office of Administrative Law, pursuant to Section 11346.2 of the Government Code, regulations governing the operation of organic composting sites that include, but are not limited to, any of the following:

(1) Odor management and threshold levels.

(2) Complaint investigation and response procedures.

(3) Enforcement tools.

(d) This section shall become inoperative on April 1, 2003, unless the board adopts and submits regulations governing the operation of organic

composting sites to the Office of Administrative Law pursuant to subdivision (c) on or prior to that date.

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

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to maintain continuity in achieving the purposes of the California Integrated Waste Management Act of 1989, it is necessary that this act take effect immediately.

CHAPTER 425

An act to amend Sections 16953 and 17050 of the Corporations Code, relating to business organizations.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 16953 of the Corporations Code is amended to read:

16953. (a) To become a registered limited liability partnership, a partnership, other than a limited partnership, shall file with the Secretary of State a registration, executed by one or more partners authorized to execute a registration, stating all of the following:

(1) The name of the partnership.

(2) The address of its principal office.

(3) The name and address of the agent for service of process on the limited liability partnership in California.

(4) A brief statement of the business in which the partnership engages.

(5) Any other matters that the partnership determines to include.

(6) That the partnership is registering as a registered limited liability partnership.

(b) The registration shall be accompanied by a fee as set forth in subdivision (a) of Section 12189 of the Government Code.

(c) The Secretary of State shall register as a registered limited liability partnership any partnership that submits a completed registration with the required fee.

(d) The Secretary of State may cancel the filing of the registration if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give a first written notice of the applicability of this section to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall thereupon be effective. The second notice shall be given 20 days or more after the first notice and 90 days or less after the date of the original filing.

(e) A partnership becomes a registered limited liability partnership at the time of the filing of the initial registration with the Secretary of State or at any later date or time specified in the registration and the payment of the fee required by subdivision (b). A partnership continues as a registered limited liability partnership until a notice that it is no longer a registered limited liability partnership has been filed pursuant to subdivision (b) of Section 16954 or, if applicable, until it has been dissolved and finally wound up. The status of a partnership as a registered limited liability partnership and the liability of a partner of the registered limited liability partnership shall not be adversely affected by errors or subsequent changes in the information stated in a registration under subdivision (a) or an amended registration or notice under Section 16954.

(f) The fact that a registration or amended registration pursuant to this section is on file with the Secretary of State is notice that the partnership is a registered limited liability partnership and of those other facts contained therein that are required to be set forth in the registration or amended registration.

(g) The Secretary of State shall provide a form for a registration under subdivision (a), which shall include the form for confirming compliance with the optional security requirement pursuant to subdivision (c) of Section 16956. The Secretary of State shall include with instructional materials provided in conjunction with the form for a registration under subdivision (a) a notice that filing the registration will obligate the limited liability partnership to pay an annual tax for that calendar year to the Franchise Tax Board pursuant to Section 17948 of the Revenue and Taxation Code. The notice shall be updated annually to specify the dollar amount of the tax.

(h) A limited liability partnership providing professional limited liability partnership services in this state shall comply with all statutory and administrative registration or filing requirements of the state board, commission, or other agency that prescribes the rules and regulations governing the particular profession in which the partnership proposes to engage, pursuant to the applicable provisions of the Business and Professions Code relating to that profession. The state board, commission, or other agency shall not disclose, unless compelled by a subpoena or other order of a court of competent jurisdiction, any information it receives in the course of evaluating the compliance of a limited liability partnership with applicable statutory and administrative registration or filing requirements, provided that nothing in this section shall be construed to prevent a state board, commission, or other agency from disclosing the manner in which the limited liability partnership has complied with the requirements of Section 16956, or the compliance or noncompliance by the limited liability partnership with any other requirements of the state board, commission, or other agency.

SEC. 2. Section 17050 of the Corporations Code is amended to read:

17050. (a) In order to form a limited liability company, one or more persons shall execute and file articles of organization with, and on a form prescribed by, the Secretary of State and, either before or after the filing of articles of organization, the members shall have entered into an operating agreement. The person or persons who execute and file the articles of organization may, but need not, be members of the limited liability company.

(b) A limited liability company shall have one or more members.

(c) The existence of a limited liability company begins upon the filing of the articles of organization. For all purposes, a copy of the articles of organization duly certified by the Secretary of State is conclusive evidence of the formation of a limited liability company and prima facie evidence of its existence.

(d) The Secretary of State shall include with instructional materials provided in conjunction with the form for filing articles of organization under subdivision (a) a notice that filing the registration will obligate the limited liability company to pay an annual tax for that calendar year to the Franchise Tax Board pursuant to Section 17941 of the Revenue and Taxation Code. The notice shall be updated annually to specify the dollar amount of the tax.

CHAPTER 426

An act to amend Sections 30005.5, 30123, 30131.2, 30177, and 30178.2 of, and to add Section 30176.2 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 30005.5 of the Revenue and Taxation Code is amended to read:

30005.5. ''Untaxed tobacco product'' means either of the following:

(a) Any tobacco product that has not yet been distributed in a manner that results in a tax liability under this part.

(b) Any tobacco product that was distributed in a manner that resulted in a tax liability under this part, but that was returned to the distributor after the tax was paid and for which the distributor has either claimed a deduction pursuant to subdivision (c) of Section 30123, or a refund or credit pursuant to Section 30176.2 or Section 30178.2.

SEC. 2. Section 30123 of the Revenue and Taxation Code is amended to read:

30123. (a) In addition to the tax imposed upon the distribution of cigarettes by this chapter, there shall be imposed upon every distributor a tax upon the distribution of cigarettes at the rate of twelve and one-half mills ($0.0125) for each cigarette distributed.

(b) There shall be imposed upon every distributor a tax upon the distribution of tobacco products, based on the wholesale cost of these products, at a tax rate, as determined annually by the State Board of Equalization, which is equivalent to the combined rate of tax imposed on cigarettes by subdivision (a) and the other provisions of this part.

(c) The wholesale cost used to calculate the amount of tax due under subdivision (b) does not include the wholesale cost of tobacco products that were returned by a customer during the same reporting period in which the tobacco products were distributed, when the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this subdivision, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs is refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

SEC. 3. Section 30131.2 of the Revenue and Taxation Code is amended to read:

30131.2. (a) In addition to the taxes imposed upon the distribution of cigarettes by Article 1 (commencing with Section 30101) and Article 2 (commencing with Section 30121) and any other taxes in this chapter, there shall be imposed an additional surtax upon every distributor of cigarettes at the rate of twenty-five mills ($0.025) for each cigarette distributed.

(b) In addition to the taxes imposed upon the distribution of tobacco products by Article 1 (commencing with Section 30101) and Article 2 (commencing with Section 30121), and any other taxes in this chapter, there shall be imposed an additional tax upon every distributor of tobacco products, based on the wholesale cost of these products, at a tax rate, as determined annually by the State Board of Equalization, which is equivalent to the rate of tax imposed on cigarettes by subdivision (a).

(c) The wholesale cost used to calculate the amount of tax due under subdivision (b) does not include the wholesale cost of tobacco products that were returned by a customer during the same reporting period in which the tobacco products were distributed, when the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this subdivision, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs is refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

SEC. 4. Section 30176.2 is added to the Revenue and Taxation Code, to read:

30176.2. The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the tax imposed on tobacco products pursuant to Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) of Chapter 2 that is paid on the distribution of tobacco products that were returned by a customer, when the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

SEC. 5. Section 30177 of the Revenue and Taxation Code is amended to read:

30177. The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the denominated values, less the discount given on their purchase, of stamps or meter impressions affixed to packages of cigarettes which have prior to distribution become unfit for use, unsalable or have been destroyed, or which after distribution have become unfit for use or unsalable and have been returned for credit or have been replaced, and the board has proof of that return or destruction.

SEC. 6. Section 30178.2 of the Revenue and Taxation Code is amended to read:

30178.2. In lieu of the refund of the tax on tobacco products pursuant to Section 30176.1 or Section 30176.2, a distributor eligible for that refund may elect to claim a credit against taxes imposed pursuant to this part equal to the amount which would have been refunded if a claim had been made pursuant to Section 30176.1 or Section 30176.2.

SEC. 7. The Legislature finds and declares that this act furthers and is consistent with the purposes expressed in Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained within the Tobacco Tax and Health Protection Act of 1988 (Proposition 99 of the November 8, 1988, general election), and Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained in the California Families and Children Act of 1998 (Proposition 10 of the November 3, 1998, general election).

SEC. 8. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 427

An act to amend Sections 6162 and 6163 of the Government Code, relating to state government.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 6162 of the Government Code is amended to read:

6162. (a) Except as provided in Section 6159, the Director of General Services, or his or her designee, may negotiate and enter into any contracts necessary to implement or facilitate the acceptance of credit cards or other payment devices by state agencies. The authority granted to the director pursuant to this section shall include the discretion to

negotiate and agree to specific terms applicable to each state agency, including, but not limited to, the terms regarding any payment of fees to third parties for the acceptance of credit cards or other payment devices, types of payments, any limitations on amounts and limits of liabilities that would be eligible for payment by credit card or other payment device, and operational requirements.

(b) The director may negotiate master contracts or other contracts that allow the cost-effective acceptance of payment by credit card or other payment device. Additionally, the director or any state agency negotiating these contracts shall use its best efforts to minimize the financial impact of credit card or other payment device acceptance on the state agency, taxpayers, and the public who use its services.

(c) The director, in consultation with the Director of e-Government, shall take steps to encourage the adoption of standard payment policies and procedures for all state agencies. Furthermore, a state agency may enter into an interagency agreement with another state agency for the purposes of establishing uniform policies and acquiring equipment to support payment by credit card or other payment device.

SEC. 2. Section 6163 of the Government Code is amended to read:

6163. (a) (1) Except as provided in paragraphs (2) and (3), all state agencies shall accept payment made by means of a credit card or other payment device.

(2) (A) A state agency may request that the director grant an exemption from paragraph (1) if the agency determines that its acceptance of payments by credit card or other payment device would have any of the following results:

(i) It would not be cost-effective.

(ii) It would result in a net additional unfunded cost to the agency.

(iii) It would result in a shortfall of revenues to the State of California.

(B) A request made pursuant to this paragraph shall state the reasons for the agency's determination. The director may request additional information from the requesting agency, and shall approve or deny the exemption request within 60 days of the receipt of all relevant information from the agency. The director also may request that the exemption be renewed on a periodic basis, and that the agency provide a plan for implementing paragraph (1).

(C) In determining cost-effectiveness, an agency may consider more than one year. In determining the cost-effectiveness of accepting payment by credit card and other payment devices, the state agency shall consider all factors relating to costs and savings associated with accepting credit cards and other payment devices. However, an agency may accept payment by credit card or other payment device notwithstanding the cost-effectiveness, if, upon the agency's analysis,

the additional level of customer service offered by these payment methods outweighs cost considerations.

(D) ''Costs'' for the purposes of this subdivision shall include, but not be limited to, the following:

(i) Amounts paid to a third party for accepting the credit card or other payment device.

(ii) Equipment costs, including telephone and maintenance expenses.

(iii) Labor costs of the state agency related to processing payments made by a credit card or other payment device.

(E) ''Savings'' for the purposes of this subdivision shall include, but not be limited to, the following:

(i) The use of the float by the applicable state agency.

(ii) Reduction in bank fees that would be charged for payments made by cash and checks.

(iii) The costs of handling cash, labor savings, theft or pilferage, reduced storage, and security and transit of handling and holding cash.

(iv) The costs of handling checks.

(v) Dishonored check costs.

(vi) Decreased facility needs.

(vii) Increased collection of mandated payments.

(viii) Increased sales of discretionary goods and services.

(ix) Reduced paperwork.

(x) Fewer in-person transactions, especially with the use of voice response units and kiosks.

(3) Notwithstanding paragraph (1), a state agency shall not accept payment by credit card or other payment device if the state agency is unable to enter into the contracts on terms that are acceptable to the agency, or if the director acting on behalf of the agency is unable to enter into contracts on terms that are acceptable to the director and the agency, as are necessary to enable the agency to accept payment by credit card or other payment device.

(4) If the Franchise Tax Board does not accept payment by credit card or other payment device as a result of this subdivision, then the law regarding credit card payments in existence prior to the effective date of the legislation adding this chapter shall apply to the Franchise Tax Board.

(b) The director may establish procedures to delegate the authority granted under this chapter to other state agencies so that these agencies may enter into contracts for accepting credit cards or other payment devices on behalf of the respective agency.

(c) For entities established under Article VI of the California Constitution, the authority of the director under this chapter shall rest with the administrative director of those entities.

(d) Any agency that intends to accept payment by credit card or other payment device pursuant to a master contract entered into by the director shall transmit a letter of intent so stating to the director.

CHAPTER 428

An act to amend the heading of Article 6 (commencing with Section 1250.410) of Chapter 5 of Title 7 of Part 3 of, to amend Sections 1250.410, 1255.010, 1255.030, 1258.220, and 1258.260 of, and to add Sections 1250.420, 1250.430, and 1260.040 to, the Code of Civil Procedure, and to amend Section 7267.2 of the Government Code, relating to eminent domain procedure.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. The heading of Article 6 (commencing with Section 1250.410) of Chapter 5 of Title 7 of Part 3 of the Code of Civil Procedure is amended to read:

Article 6. Settlement Offers and Alternative Dispute Resolution

SEC. 2. Section 1250.410 of the Code of Civil Procedure is amended to read:

1250.410. (a) At least 20 days prior to the date of the trial on issues relating to compensation, the plaintiff shall file with the court and serve on the defendant its final offer of compensation in the proceeding and the defendant shall file and serve on the plaintiff its final demand for compensation in the proceeding. The offer and the demand shall include all compensation required pursuant to this title, including compensation for loss of goodwill, if any, and shall state whether interest and costs are included. Such offers and demands shall be the only offers and demands considered by the court in determining the entitlement, if any, to litigation expenses. Service shall be in the manner prescribed by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(b) If the court, on motion of the defendant made within 30 days after entry of judgment, finds that the offer of the plaintiff was unreasonable and that the demand of the defendant was reasonable viewed in the light of the evidence admitted and the compensation awarded in the proceeding, the costs allowed pursuant to Section 1268.710 shall include the defendant's litigation expenses.

In determining the amount of those litigation expenses, the court shall consider the offer required to be made by the plaintiff pursuant to Section 7267.2 of the Government Code and any other written offers and demands filed and served prior to or during the trial.

(c) If timely made, the offers and demands as provided in subdivision (a) shall be considered by the court on the issue of determining an entitlement to litigation expenses.

SEC. 3. Section 1250.420 is added to the Code of Civil Procedure, to read:

1250.420. The parties may by agreement refer a dispute that is the subject of an eminent domain proceeding for resolution by any of the following means:

(a) Mediation by a neutral mediator.

(b) Binding arbitration by a neutral arbitrator. The arbitration is subject to Chapter 12 (commencing with Section 1273.010).

(c) Nonbinding arbitration by a neutral arbitrator. The arbitrator's decision in a nonbinding arbitration is final unless within 30 days after service of the arbitrator's decision a party moves the court for a trial of the eminent domain proceeding. If the judgment in the eminent domain proceeding is not more favorable to the moving party, the court shall order that party to pay to the other parties the following nonrefundable costs and fees, unless the court finds in writing and on motion that the imposition of costs and fees would create such a substantial economic hardship as not to be in the interest of justice:

(1) All costs specified in Section 1033.5, limited to those incurred from the time of election of the trial de novo. Nothing in this subdivision affects the right of a defendant to recover costs otherwise allowable pursuant to Section 1268.710, incurred before election of a trial de novo, except that a defendant may recover the costs of determining the apportionment of the award made pursuant to subdivision (b) of Section 1260.220 whenever incurred.

(2) The reasonable costs of the services of expert witnesses who are not regular employees of any party, actually incurred and reasonably necessary in the preparation or trial of the case, limited to those incurred from the time of election of the trial de novo.

(3) The compensation paid by the parties to the arbitrator.

SEC. 4. Section 1250.430 is added to the Code of Civil Procedure, to read:

1250.430. Notwithstanding any other statute or rule of court governing the date of trial of an eminent domain proceeding, on motion of a party the court may postpone the date of trial for a period that appears adequate to enable resolution of a dispute pursuant to alternative resolution procedures, if it is demonstrated to the satisfaction of the court that all of the following conditions are satisfied:

(a) The parties are actively engaged in alternative resolution of the dispute pursuant to Section 1250.420.

(b) The parties appear to be making progress toward resolution of the dispute without the need for a trial of the matter.

(c) The parties agree that additional time for the purpose of alternative dispute resolution is desirable.

SEC. 5. Section 1255.010 of the Code of Civil Procedure is amended to read:

1255.010. (a) At any time before entry of judgment, the plaintiff may deposit with the State Treasury the probable amount of compensation, based on an appraisal, that will be awarded in the proceeding. The appraisal upon which the deposit is based shall be one that satisfies the requirements of subdivision (b). The deposit may be made whether or not the plaintiff applies for an order for possession or intends to do so.

(b) Before making a deposit under this section, the plaintiff shall have an expert qualified to express an opinion as to the value of the property (1) make an appraisal of the property and (2) prepare a written statement of, or summary of the basis for, the appraisal. The statement or summary shall contain detail sufficient to indicate clearly the basis for the appraisal, including, but not limited to, all of the following information:

(A) The date of valuation, highest and best use, and applicable zoning of the property.

(B) The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the appraisal.

(C) If the appraisal includes compensation for damages to the remainder, the compensation for the property and for damages to the remainder separately stated, and the calculations and a narrative explanation supporting the compensation, including any offsetting benefits.

(c) On noticed motion, or upon ex parte application in an emergency, the court may permit the plaintiff to make a deposit without prior compliance with subdivision (b) if the plaintiff presents facts by affidavit showing that (1) good cause exists for permitting an immediate deposit to be made, (2) an adequate appraisal has not been completed and cannot reasonably be prepared before making the deposit, and (3) the amount of the deposit to be made is not less than the probable amount of compensation that the plaintiff, in good faith, estimates will be awarded in the proceeding. In its order, the court shall require that the plaintiff comply with subdivision (b) within a reasonable time, to be specified in the order, and also that any additional amount of compensation shown by the appraisal required by subdivision (b) be deposited within that time.

SEC. 6. Section 1255.030 of the Code of Civil Procedure is amended to read:

1255.030. (a) At any time after a deposit has been made pursuant to this article, the court shall, upon motion of the plaintiff or of any party having an interest in the property for which the deposit was made, determine or redetermine whether the amount deposited is the probable amount of compensation that will be awarded in the proceeding. The motion shall be supported with detail sufficient to indicate clearly the basis for the motion, including, but not limited to, the following information to the extent relevant to the motion:

(1) The date of valuation, highest and best use, and applicable zoning of the property.

(2) The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the motion.

(3) The compensation for the property and for damages to the remainder separately stated, and the calculations and a narrative explanation supporting the compensation, including any offsetting benefits.

(b) If the plaintiff has not taken possession of the property and the court determines that the probable amount of compensation exceeds the amount deposited, the court may order the plaintiff to increase the deposit or may deny the plaintiff possession of the property until the amount deposited has been increased to the amount specified in the order.

(c) If the plaintiff has taken possession of the property and the court determines that the probable amount of compensation exceeds the amount deposited, the court shall order the amount deposited to be increased to the amount determined to be the probable amount of compensation. If the amount on deposit is not increased accordingly within 30 days from the date of the court's order, or any longer time as the court may have allowed at the time of making the order, the defendant may serve on the plaintiff a notice of election to treat that failure as an abandonment of the proceeding. If the plaintiff does not cure its failure within 10 days after receipt of such notice, the court shall, upon motion of the defendant, enter judgment dismissing the proceeding and awarding the defendant his or her litigation expenses and damages as provided in Sections 1268.610 and 1268.620.

(d) After any amount deposited pursuant to this article has been withdrawn by a defendant, the court may not determine or redetermine the probable amount of compensation to be less than the total amount already withdrawn. Nothing in this subdivision precludes the court from making a determination or redetermination that probable compensation is greater than the amount withdrawn.

(e) If the court determines that the amount deposited exceeds the probable amount of compensation, it may permit the plaintiff to withdraw the excess not already withdrawn by the defendant.

(f) The plaintiff may at any time increase the amount deposited without making a motion under this section. In that case, notice of the increase shall be served as provided in subdivision (a) of Section 1255.020.

SEC. 7. Section 1258.220 of the Code of Civil Procedure is amended to read:

1258.220. (a) For the purposes of this article, the ''date of exchange'' is the date agreed to for the exchange of their lists of expert witnesses and statements of valuation data by the party who served a demand and the party on whom the demand was served or, failing agreement, a date 90 days prior to commencement of the trial on the issue of compensation or the date set by the court on noticed motion of either party establishing good cause therefor.

(b) Notwithstanding subdivision (a), unless otherwise agreed to by the parties, the date of exchange shall not be earlier than nine months after the date of commencement of the proceeding.

SEC. 8. Section 1258.260 of the Code of Civil Procedure is amended to read:

1258.260. (a) The statement of valuation data shall give the name and business or residence address of the witness and shall include a statement whether the witness will testify to an opinion as to any of the matters listed in Section 1258.250 and, as to each matter upon which the witness will give an opinion, what that opinion is and the following items to the extent that the opinion is based on them:

(1) The interest being valued.

(2) The date of valuation used by the witness.

(3) The highest and best use of the property.

(4) The applicable zoning and the opinion of the witness as to the probability of any change in zoning.

(5) The sales, contracts to sell and purchase, and leases supporting the opinion.

(6) The cost of reproduction or replacement of the existing improvements on the property, the depreciation or obsolescence the improvements have suffered, and the method of calculation used to determine depreciation.

(7) The gross income from the property, the deductions from gross income, and the resulting net income; the reasonable net rental value attributable to the land and existing improvements, and the estimated gross rental income and deductions upon which the reasonable net rental value is computed; the rate of capitalization used; and the value indicated by the capitalization.

(8) If the property is a portion of a larger parcel, a description of the larger parcel and its value.

(9) If the opinion concerns loss of goodwill, the method used to determine the loss, and a summary of the data supporting the opinion.

(b) With respect to each sale, contract, or lease listed under paragraph (5) of subdivision (a), the statement of valuation data shall give:

(1) The names and business or residence addresses, if known, of the parties to the transaction.

(2) The location of the property subject to the transaction.

(3) The date of the transaction.

(4) If recorded, the date of recording and the volume and page or other identification of the record of the transaction.

(5) The price and other terms and circumstances of the transaction. In lieu of stating the terms contained in any contract, lease, or other document, the statement may, if the document is available for inspection by the adverse party, state the place where and the times when it is available for inspection.

(6) The total area and shape of the property subject to the transaction.

(c) If any opinion referred to in Section 1258.250 is based in whole or in substantial part upon the opinion of another person, the statement of valuation data shall include the name and business or residence address of that other person, his business, occupation, or profession, and a statement as to the subject matter to which his or her opinion relates.

(d) Except when an appraisal report is used as a statement of valuation data as permitted by subdivision (e), the statement of valuation data shall include a statement, signed by the witness, that the witness has read the statement of valuation data and that it fairly and correctly states his or her opinions and knowledge as to the matters therein stated.

(e) An appraisal report that has been prepared by the witness which includes the information required to be included in a statement of valuation data may be used as a statement of valuation data under this article.

SEC. 9. Section 1260.040 is added to the Code of Civil Procedure, to read:

1260.040. (a) If there is a dispute between plaintiff and defendant over an evidentiary or other legal issue affecting the determination of compensation, either party may move the court for a ruling on the issue. The motion shall be made not later than 60 days before commencement of trial on the issue of compensation. The motion shall be heard by the judge assigned for trial of the case.

(b) Notwithstanding any other statute or rule of court governing the date of final offers and demands of the parties and the date of trial of an eminent domain proceeding, the court may postpone those dates for a

period sufficient to enable the parties to engage in further proceedings before trial in response to its ruling on the motion.

(c) This section supplements, and does not replace any other pretrial or trial procedure otherwise available to resolve an evidentiary or other legal issue affecting the determination of compensation.

SEC. 10. Section 7267.2 of the Government Code is amended to read:

7267.2. (a) Prior to adopting a resolution of necessity pursuant to Section 1245.230 of the Code of Civil Procedure and initiating negotiations for the acquisition of real property, the public entity shall establish an amount which it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established, unless the owner cannot be located with reasonable diligence. The offer may be conditioned upon the legislative body's ratification of the offer by execution of a contract of acquisition or adoption of a resolution of necessity or both. In no event shall the amount be less than the public entity's approved appraisal of the fair market value of the property. Any decrease or increase in the fair market value of real property to be acquired prior to the date of valuation caused by the public improvement for which the property is acquired, or by the likelihood that the property would be acquired for the improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant, shall be disregarded in determining the compensation for the property.

(b) The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. The written statement and summary shall contain detail sufficient to indicate clearly the basis for the offer, including, but not limited to, all of the following information:

(1) The date of valuation, highest and best use, and applicable zoning of property.

(2) The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value.

(3) Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.

(c) Where the property involved is owner occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based. The public entity may, but is not required to, satisfy the written statement, summary, and review

requirements of this section by providing the owner a copy of the appraisal on which the offer is based.

(d) Notwithstanding subdivision (a), a public entity may make an offer to the owner or owners of record to acquire real property for less than an amount which it believes to be just compensation therefor if (1) the real property is offered for sale by the owner at a specified price less than the amount the public entity believes to be just compensation therefor, (2) the public entity offers a price which is equal to the specified price for which the property is being offered by the landowner, and (3) no federal funds are involved in the acquisition, construction, or project development.

(e) As used in subdivision (d), ''offered for sale'' means any of the following:

(1) Directly offered by the landowner to the public entity for a specified price in advance of negotiations by the public entity.

(2) Offered for sale to the general public at an advertised or published, specified price set no more than six months prior to and still available at the time the public entity initiates contact with the landowner regarding the public entity's possible acquisition of the property.

SEC. 11. This act applies to any proceeding commenced on or after January 1, 2002.

CHAPTER 429

An act to amend Sections 6471.4, 6480, 6480.1, 6480.2, 6480.3, 6480.4, 6480.6, 6480.7, 7320, 7326, 7330, 7337, 7343, 7344, 7364, 7404, 7405, 7453, 7653, 7657, 7727, 8101, 8126, 60015, 60022, 60027, 60034, 60052, 60056, 60057, 60058, 60101, 60105, 60106.2, 60106.3, 60107, 60161, 60163, 60181, 60206, 60211, 60360, 60401, 60501, 60503.1, 60503.2, 60521, and 60605 of, to add Sections 7345, 7372, 7373, 7659.93, 8106.8, 60025, 60047, 60047.1, 60048, 60048.1, 60049, 60049.1, 60063, 60064, 60135, 60204.5, 60253, 60361.5, and 60508.4 to, to repeal Sections 6480.5, 6480.8, 7652, 7654, and 60203 of, to repeal and add Sections 7486 and 7487 of, and to repeal Article 1.6 (commencing with Section 6480.10) of Chapter 5 of Part 1 of Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 6471.4 of the Revenue and Taxation Code is amended to read:

6471.4. Any person required to make prepayment pursuant to Article 1.5 (commencing with Section 6480) may not be required to make additional prepayment pursuant to this article, provided that more than 75 percent of the gross receipts of that person are from the retail sale of motor vehicle fuel, diesel fuel, aircraft jet fuel, or any combination of those fuels.

SEC. 2. Section 6480 of the Revenue and Taxation Code is amended to read:

6480. (a) For purposes of the imposition of the prepayment of sales tax on motor vehicle fuel or aircraft jet fuel pursuant to this article, the terms ''aircraft jet fuel,'' ''aircraft jet fuel dealer,'' ''aviation gasoline,'' ''entry,'' ''in this state,'' ''motor vehicle fuel,'' ''person,'' ''removal,'' ''sale,'' and ''supplier'' are defined pursuant to Part 2 (commencing with Section 7301), except as provided in subdivision (b).

(b) For purposes of this article, ''motor vehicle fuel'' does not include aviation gasoline for use in propelling aircraft.

(c) For purposes of the imposition of the prepayment of sales tax on diesel fuel pursuant to this article, the terms ''diesel fuel,'' ''entry,'' ''in this state,'' ''removal,'' ''person,'' and ''supplier,'' are defined pursuant to Part 31 (commencing with Section 60001).

(d) ''Wholesaler'' includes every person other than a supplier, dealing in motor vehicle fuel, aircraft jet fuel, or diesel fuel. ''Wholesaler'' does not include anyone dealing in motor vehicle fuel or diesel fuel in the capacity of an operator of a service station. ''Wholesaler'' does not include anyone dealing in aircraft jet fuel in the capacity of an aircraft jet fuel dealer.

(e) With respect to diesel fuel and aircraft jet fuel, ''sale'' means:

(1) The transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of aircraft jet fuel or diesel fuel (other than aircraft jet fuel or diesel fuel in a terminal) to a purchaser for a consideration.

(2) The transfer of the inventory position in the aircraft jet fuel or diesel fuel in a terminal if the purchaser becomes the positionholder with respect to the taxable fuel.

(f) For purposes of this article, aircraft jet fuel will be subject to the prepayment of sales tax at such time and in such manner as if it were subject to diesel fuel tax under the Diesel Fuel Tax Law in Part 31 (commencing with Section 60001), except that in the case of bulk transfers, aircraft jet fuel is not subject to the prepayment of sales tax as to the removal of diesel fuel in this state from any refinery as described

in paragraph (1) of subdivision (a) of Section 60052, the entry of diesel fuel into this state as described in paragraph (1) of subdivision (b) of Section 60052, or the removal of diesel fuel in this state as described in subdivision (c) of Section 60052.

SEC. 3. Section 6480.1 of the Revenue and Taxation Code is amended to read:

6480.1. (a) At any time that motor vehicle fuel tax or diesel fuel tax is imposed or would be imposed, but for the dyed diesel fuel exemption in paragraph (1) of subdivision (a) of Section 60100, or the train operator exemption in paragraph (7) of subdivision (a) of Section 60100 or paragraph (11) of subdivision (a) of Section 7401, or, pursuant to subdivision (f) of Section 6480, would be deemed to be imposed, on any removal, entry, or sale in this state of motor vehicle fuel, aircraft jet fuel, or diesel fuel, the supplier shall collect prepayment of retail sales tax from the person to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is sold. However, if no sale occurs at the time of imposition of motor vehicle fuel tax or diesel fuel tax, the supplier shall prepay the retail sales tax on that motor vehicle fuel, aircraft jet fuel, or diesel fuel. The prepayment required to be collected by the supplier constitutes a debt owed by the supplier to this state until paid to the board, until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the retail sales tax to the board, or until a supplier or wholesaler who has consumed the fuel has paid the use tax to the board. Each supplier shall report and pay the prepayment amounts to the board, in a form as prescribed by the board, in the period in which the fuel is sold. On each subsequent sale of that fuel, each seller, other than the retailer, shall collect from his or her purchaser a prepayment computed using the rate applicable at the time of sale. Each supplier shall provide his or her purchaser with an invoice for, or other evidence of, the collection of the prepayment amounts which shall be separately stated thereon.

(b) (1) A wholesaler shall collect prepayment of the retail sales tax from the person to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is sold. Each wholesaler shall provide his or her purchaser with an invoice for or other evidence of the collection of the prepayment amounts, which shall be separately stated thereon.

(2) Each wholesaler shall report to the board, in a form as prescribed by the board and for the period in which the motor vehicle fuel, aircraft jet fuel, or diesel fuel was sold, all of the following:

(A) The number of gallons of fuel sold and the amount of sales tax prepayments collected by the wholesaler.

(B) The number of tax-paid gallons purchased and the amount of sales tax prepayments made by the wholesaler.

(C) In the event that the amount of sales tax prepayments collected by the wholesaler is greater than the amount of sales tax prepayments

made by the wholesaler, then the excess constitutes a debt owed by the wholesaler to the state until paid to the board, or until satisfactory proof has been submitted that the retailer of the fuel has paid the tax to the board.

(c) A supplier or wholesaler who pays the prepayment and issues a resale certificate to the seller, but subsequently consumes the motor vehicle fuel, aircraft jet fuel, or diesel fuel, shall be entitled to a credit against his or her sales and use taxes due and payable for the period in which the prepayment was made, provided that he or she reports and pays the use tax to the board on the consumption of that fuel.

(d) The amount of a prepayment paid by the retailer or a supplier or wholesaler who has consumed the motor vehicle fuel, aircraft jet fuel, or diesel fuel to the seller from whom he or she acquired the fuel shall constitute a credit against his or her sales and use taxes due and payable for the period in which the sale was made. Failure of the supplier or wholesaler to report prepayments or the supplier's or wholesaler's failure to comply with any other duty under this article shall not constitute grounds for denial of the credit to the retailer, supplier, or wholesaler, either on a temporary or permanent basis or otherwise. To be entitled to the credit, the retailer, supplier, or wholesaler shall retain for inspection by the board any receipts, invoices, or other documents showing the amount of sales tax prepaid to his or her supplier, together with the evidence of payment.

(e) The rate of the prepayment required to be collected during the period from July 1, 1986, through March 31, 1987, shall be four cents ($0.04) per gallon of motor vehicle fuel distributed or transferred.

(f) On April 1 of each succeeding year, the prepayment rate per gallon for motor vehicle fuel, rounded to the nearest one-half of one cent ($0.005), of the required prepayment shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, and 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales tax) as determined by the State Energy Resources Conservation and Development Commission, in its latest publication of the ''Quarterly Oil Report,'' of all grades of gasoline sold through a self-service gasoline station. In the event the ''Quarterly Oil Report'' is delayed or discontinued, the board may base its determination on other sources of the arithmetic average selling price of gasoline. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every supplier, wholesaler, and retailer of motor vehicle fuel. In the event the price of fuel decreases or increases, and the established rate results in

prepayments which consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(g) On April 1 of each succeeding year, the prepayment rate per gallon for aircraft jet fuel rounded to the nearest one-half of one cent ($0.005), shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales and state excise tax) as determined by the board. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. The rate of the prepayment required to be collected for aircraft jet fuel shall be equal to 80 percent of the arithmetic average selling price of aircraft jet fuel as specified by industry publications. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every supplier, wholesaler, and retailer of aircraft jet fuel. In the event the price of aircraft jet fuel decreases or increases, and the established rate results in prepayments that consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(h) On April 1 of each succeeding year, the prepayment rate per gallon for diesel fuel rounded to the nearest one-half of one cent ($0.005), shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales and state excise tax) as determined by the board. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. The rate of the prepayment required to be collected for diesel fuel shall be equal to 80 percent of the arithmetic average selling price of diesel fuel as specified by industry publications. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every supplier, wholesaler, and retailer of diesel fuel. In the event the price of diesel fuel decreases or increases, and the established rate results in prepayments that consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(i) (1) Notwithstanding any other provision of this section, motor vehicle fuel sold by a supplier or wholesaler to a qualified purchaser who, pursuant to a contract with the State of California or its instrumentalities, resells that fuel to the State of California or its instrumentalities shall be exempt from the prepayment requirements.

(2) A qualified purchaser who acquires motor vehicle fuel for subsequent resale to the State of California or its instrumentalities

pursuant to this subdivision shall furnish to the supplier or wholesaler from whom the fuel is acquired an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe. The supplier or wholesaler shall retain the certificate in his or her records in support of the exemption. To qualify for the prepayment exemption, both of the following conditions shall apply:

(A) The qualified purchaser does not take possession of the fuel at any time.

(B) The fuel is delivered into storage tanks owned or leased by the State of California or its instrumentalities via facilities of the supplier or wholesaler, or by common or contract carriers under contract with the supplier or wholesaler.

(3) For purposes of this subdivision, ''qualified purchaser'' means a wholesaler who does not have or maintain a storage facility or facilities for the purpose of selling motor vehicle fuel.

SEC. 4. Section 6480.2 of the Revenue and Taxation Code is amended to read:

6480.2. (a) If the board determines that it is necessary for the efficient administration of this part, the board may require a supplier or wholesaler to provide the board with a list of purchasers to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel was sold.

(b) In addition to any other reports required under this article, the board may, by rule and otherwise, require additional, other, or supplemental reports, in any form which the board may require, from suppliers or wholesalers with respect to their sales of motor vehicle fuel, aircraft jet fuel, or diesel fuel.

(c) Any supplier or wholesaler who fails to comply with this section is guilty of a misdemeanor punishable as provided in Section 7153.

SEC. 5. Section 6480.3 of the Revenue and Taxation Code is amended to read:

6480.3. The supplier or wholesaler shall file his or her prepayment form together with a remittance of the prepayment amounts, if any, required to be collected pursuant to Section 6480.1 payable to the State Board of Equalization, on or before the last day of the month following the monthly period to which the prepayment form or each prepayment relates.

SEC. 6. Section 6480.4 of the Revenue and Taxation Code is amended to read:

6480.4. (a) Any supplier or wholesaler who fails to make a timely remittance to the board of the prepayment amounts, if any, required pursuant to Sections 6480.1 and 6480.3 shall also pay a penalty of 10 percent of the amount of the prepayment due but not paid, plus interest at the modified adjusted rate per month, or fraction thereof, established

pursuant to Section 6591.5, from the date the prepayment became due and payable to the state until the date of payment.

(b) The penalty amount specified in subdivision (a) shall be 25 percent if the supplier or wholesaler knowingly or intentionally fails to make a timely remittance.

SEC. 7. Section 6480.5 of the Revenue and Taxation Code is repealed.

SEC. 8. Section 6480.6 of the Revenue and Taxation Code is amended to read:

6480.6. (a) The following persons who have paid prepayment amounts either directly to the board or to the person from whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel was purchased shall be refunded those amounts:

(1) Any person who exports the fuel for subsequent sale outside this state.

(2) Any person who sells the fuel which is exempt from the sales or use tax pursuant to Sections 6352, 6357, 6381, and 6396.

(3) Any person who has lost the fuel through fire, flood, theft, leakage, evaporation, shrinkage, spillage, or accident, prior to any retail sale.

(4) Any supplier who has removed fuel from an approved terminal at the terminal rack, but only to the extent that the supplier can show that tax on the same amount of fuel has been paid more than one time by the same supplier.

(5) Any person who is unable to collect the prepayment from the purchaser insofar as the sales of the fuel are represented by accounts which have been found to be worthless and charged off for income tax purposes, or, if the person is not required to file income tax returns, accounts which have been charged off in accordance with generally accepted accounting principles. If partial payments have been made, the payments shall be prorated between amounts due for fuel and amounts due for the related prepayment. If any of those accounts are thereafter in whole or in part collected by the seller, the gallons of fuel represented by the amounts collected shall be included in the first return filed after that collection and the amount of the prepayment thereon paid with the return.

(b) In lieu of a refund, the board may authorize a credit to be taken by the person to whom the refund is due upon his or her prepayment form or sales and use tax return.

SEC. 9. Section 6480.7 of the Revenue and Taxation Code is amended to read:

6480.7. (a) The board may require any supplier or wholesaler subject to this article to place with the board any security that the board determines is necessary to ensure compliance with this article. The

amount of the security shall be fixed by the board but shall not be greater than three times the estimated average liability of suppliers or wholesalers required to file returns for monthly periods, determined in any manner that the board deems proper, or five hundred thousand dollars ($500,000), whichever amount is less. These amounts apply regardless of the type of security placed with the board. The amount of the security may be increased or decreased by the board subject to the maximum amounts. The security required pursuant to this section is in addition to the bond or bonds required pursuant to Section 7486.

(b) The board may sell the security at public auction if it becomes necessary to so do in order to recover any tax or any amount required to be collected or penalty due. Notice of the sale may be served upon the person who placed the security personally or by mail. If service is by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination and shall be addressed to the person at his or her address as it appears in the records of the board. However, security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may be sold by the board at a private sale at a price not lower than the prevailing market price thereof. Upon any sale, any surplus above the amounts due shall be returned to the supplier or wholesaler who placed the security.

SEC. 10. Section 6480.8 of the Revenue and Taxation Code is repealed.

SEC. 11. Article 1.6 (commencing with Section 6480.10) of Chapter 5 of Part 1 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 12. Section 7320 of the Revenue and Taxation Code is amended to read:

7320. ''Highway vehicle operator/fueler'' includes:

(a) Any person that owns, operates, or otherwise controls a motor vehicle fuel-powered highway vehicle and delivers, or causes to be delivered, motor vehicle fuel or any liquid into the fuel tank of a motor vehicle fuel-powered highway vehicle; or

(b) Any person who sells motor vehicle fuel on which a claim for refund has been allowed, or who sells and delivers or causes to be delivered into the fuel tank of a motor vehicle fuel-powered highway vehicle any liquid on which tax has not been imposed.

SEC. 13. Section 7326 of the Revenue and Taxation Code is amended to read:

7326. ''Motor vehicle fuel'' means gasoline and aviation gasoline. It does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

SEC. 14. Section 7330 of the Revenue and Taxation Code is amended to read:

7330. ''Pipeline'' means a fuel distribution system that moves motor vehicle fuel, in bulk, through a pipe, from a refinery to a terminal, from a terminal to another terminal, from a vessel to a terminal, or from a refinery or terminal to a vessel.

SEC. 15. Section 7337 of the Revenue and Taxation Code is amended to read:

7337. ''Sale'' means:

(a) The transfer of title to motor vehicle fuel (other than motor vehicle fuel in a terminal) to a buyer for consideration, which may consist of money, services, or other property.

(b) The transfer of the inventory position in the motor vehicle fuel in a terminal if the buyer becomes the position holder with respect to the motor vehicle fuel.

SEC. 16. Section 7343 of the Revenue and Taxation Code is amended to read:

7343. ''Vessel'' means a waterborne vessel used for transporting motor vehicle fuel.

SEC. 17. Section 7344 of the Revenue and Taxation Code is amended to read:

7344. ''Vessel operator'' means any person that operates or otherwise controls a vessel.

SEC. 18. Section 7345 is added to the Revenue and Taxation Code, to read:

7345. ''Tax-paid fuel'' or ''tax paid'' means the gallons of motor vehicle fuel acquired on either a temperature corrected or volumetric basis on which the tax in Section 7360 has been imposed at the time of or prior to the acquisition by the supplier or person.

SEC. 19. Section 7364 of the Revenue and Taxation Code is amended to read:

7364. The tax specified in Section 7360 is imposed as a backup tax as follows:

(a) On the delivery into the fuel tank of a motor vehicle fuel-powered highway vehicle of:

(1) Any motor vehicle fuel on which a claim for refund has been allowed; or

(2) Any liquid on which tax has not been imposed by this part, Part 3 (commencing with Section 8601), or Part 31 (commencing with Section 60001).

(b) On the sale of any motor vehicle fuel on which a claim for refund has been allowed.

(c) On the sale and delivery into the fuel tank of a motor vehicle fuel-powered highway vehicle of any liquid on which tax has not been imposed by this part, Part 3 (commencing with Section 8601), or Part 31 (commencing with Section 60001).

SEC. 20. Section 7372 is added to the Revenue and Taxation Code, to read:

7372. (a) The board may accept from the person who receives motor vehicle fuel removed at a refinery or terminal rack an amount equal to the tax due and required to be paid by the refiner or positionholder upon the removal of the motor vehicle fuel from a refinery or terminal rack, as if the amount were payment of the tax by the refiner or positionholder under Section 7362 or 7363, as the case may be, if the Internal Revenue Service authorizes payment of federal fuel taxes by the receiving party under a two-party exchange agreement or similar arrangement.

(b) The refiner or positionholder shall remain primarily liable for payment of the tax imposed by Section 7362 or 7363 for motor vehicle fuel removed at the refinery or terminal rack, as the case may be, plus any penalty or interest, until the amount is finally paid and credited to the account of the responsible refiner or positionholder; provided, however, that the board, at its discretion, may relieve the refiner or positionholder from primary liability for payment of tax imposed by Section 7362 or 7363 and hold another person primarily liable for the tax if (1) the Internal Revenue Service authorizes payment of fuel taxes by the receiving party under a two-party exchange agreement, and (2) under the Internal Revenue Service approach to two-party exchange agreements, another person is primarily liable for payment of the tax, and (3) the board elects to follow the Internal Revenue Service approach.

(c) The board may adopt those regulations as it deems appropriate to carry out this section.

SEC. 21. Section 7373 is added to the Revenue and Taxation Code, to read:

7373. (a) For the purpose of the proper administration of this part and to prevent evasion of the tax, unless the contrary is established, it shall be presumed that all motor vehicle fuel received at a terminal in this state, imported into this state, or refined and placed into storage for removal at a refinery in this state or blended motor vehicle fuel blended or converted in this state and no longer in the possession of the supplier has been removed or sold by the supplier.

(b) The presumption shall not apply if the supplier proves to the satisfaction of the board that both:

(1) The supplier has exercised ordinary care in entrusting control or possession of the motor vehicle fuel to another person.

(2) The person to whom the supplier has entrusted the control or possession of the motor vehicle fuel as bailee, consignee, employee, or agent, caused a removal or sale by the act of converting to that person's own use the motor vehicle fuel so entrusted to that person by the supplier.

(c) If the supplier proves to the satisfaction of the board, the existence of both of the circumstances in paragraphs (1) and (2) of subdivision (b), then the person who converted the motor vehicle fuel to his or her own use, as well as any other person receiving that motor vehicle fuel with the knowledge that it was so converted, shall be liable for payment of the tax imposed upon that removal or sale, and all of those persons shall be considered as suppliers for the purpose of Chapter 5 (commencing with Section 7651) or Chapter 6 (commencing with Section 7851) of this part.

SEC. 22. Section 7404 of the Revenue and Taxation Code is amended to read:

7404. If a purchaser gives an exemption certificate for motor vehicle fuel pursuant to this chapter to the effect that the motor vehicle fuel purchased will be used in an exempt manner, and sells the motor vehicle fuel or uses the motor vehicle fuel in some other manner or for some other purpose, the purchaser will be liable for payment of the tax under Chapter 2 (commencing with Section 7360) of this part. The tax, applicable penalties, and interest shall become due and payable and shall be ascertained and determined in the same manner as the backup tax under Section 7727.

SEC. 23. Section 7405 of the Revenue and Taxation Code is amended to read:

7405. (a) Any person, including any officer or employee of a corporation, who gives an exemption certificate pursuant to this chapter for motor vehicle fuel that he or she knows at the time of purchase is not to be used by him or her or the corporation in an exempt manner, for the purpose of evading payment of the amount of the tax applicable to the transaction, is guilty of a misdemeanor punishable as provided in Section 8405.

(b) Any person, including any officer or employee of a corporation, who gives an exemption certificate for motor vehicle fuel pursuant to this chapter that he or she knows at the time of purchase is not to be used by him or her or the corporation in an exempt manner, is liable to the state for the amount of tax that would be due if he or she had not given that certificate. In addition to the tax, the person shall be liable to the state for a penalty of 25 percent of the tax or one thousand dollars ($1,000), whichever is greater, for each certificate issued for personal gain or to evade the payment of taxes.

SEC. 24. Section 7453 of the Revenue and Taxation Code is amended to read:

7453. Before granting a license authorizing a person to engage in business as a supplier, the board may require the person to file with the board security pursuant to Section 7486. The license issued to any supplier is not transferable and is valid until canceled or revoked.

SEC. 25. Section 7486 of the Revenue and Taxation Code is repealed.

SEC. 26. Section 7486 is added to the Revenue and Taxation Code, to read:

7486. The board, whenever it deems it necessary to ensure compliance with this part or any rule or regulation adopted under this part, may require any person to deposit with it any security as it may determine appropriate. The amount of the security shall be fixed by the board but shall not be more than three times the estimated average monthly tax liability of the person. The total amount of security shall not be in excess of one million dollars ($1,000,000) where the person has established to the satisfaction of the board that this security, together with property to which the lien imposed by Section 7872 attaches, is sufficient security to ensure payment of taxes equivalent to three times the estimated average monthly tax liability of the person. The amount of the security may be increased or decreased by the board at any time. Any security in the form of cash or insured deposits in banks and savings and loan institutions shall be held by the board in trust to be used solely in the manner provided for in this section and Section 7487. Any security in the form of a bond or bonds shall be duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful performance of all the requirements of this part, and expressly providing for the payment of all taxes, penalties, and other obligations of the person arising out of this part. Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax to the state or any amount of tax required to be collected and paid to the state within the time required.

SEC. 27. Section 7487 of the Revenue and Taxation Code is repealed.

SEC. 28. Section 7487 is added to the Revenue and Taxation Code, to read:

7487. If, at the time a person ceases to operate under this part, the board holds a security pursuant to Section 7486 in the form of cash, or insured deposits in banks or savings and loan institutions, the security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the Controller on the date the person ceases to operate under this part.

SEC. 29. Section 7652 of the Revenue and Taxation Code is repealed.

SEC. 30. Section 7653 of the Revenue and Taxation Code is amended to read:

7653. (a) Each person subject to the tax imposed under Section 7361, on or before February 28, 2002, shall prepare and file with the board, on forms prescribed by the board, a return showing the total

number of gallons of motor vehicle fuel owned by the person on January 1, 2002, for which a tax has not been imposed under Part 2 (commencing with Section 7301) as in effect on December 31, 2001, the amount of the tax imposed, and any other information that the board deems necessary for the proper administration of this part. The return shall be accompanied by a remittance payable to the Controller in the amount of tax due.

(b) Any distributor, as defined in paragraph (3) of subdivision (b) of Section 7361, who has tax-paid motor vehicle fuel in the bulk transfer/terminal system on January 1, 2002, which was purchased prior to January 1, 2002, shall report the tax-paid gallons on the subdivision (a) return. The amount of taxes paid on the tax-paid gallons shall constitute a credit against the amount of taxes due and payable on the subdivision (a) return, or on the supplier's January 2002 return required under Section 7651, and for each succeeding return until the credit is fully utilized.

SEC. 31. Section 7654 of the Revenue and Taxation Code is repealed.

SEC. 32. Section 7657 of the Revenue and Taxation Code is amended to read:

7657. (a) If the board finds that a person's failure to make a timely report, return, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 7655, 7659.5, 7659.6, 7659.9 7660, 7705, and 7713.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 33. Section 7659.93 is added to the Revenue and Taxation Code, to read:

7659.93. (a) Any return, report, declaration statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, report, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

(d) Upon written approval of the board, a person may satisfy the requirements of subdivision (a) by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the person under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board, in its sole discretion, may rescind its approval and require a person to file reports as specified in subdivision (a).

SEC. 34. Section 7727 of the Revenue and Taxation Code is amended to read:

7727. (a) The backup tax imposed under Section 7364 and any applicable penalties and interest shall be immediately due and payable. The board shall forthwith ascertain as best it may the amount of motor vehicle fuel sold, or delivered into the fuel tank of a motor vehicle fuel-powered highway vehicle, or sold and delivered into the fuel tank of a motor vehicle fuel-powered highway vehicle, and shall determine immediately the tax on the amount and shall give the highway vehicle operator/fueler notice of this determination as prescribed by Section 7671. The determination shall include interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the date the backup tax applies until the date of remittance to the state. The provisions of Sections 7699 and 7700 shall be applicable with respect to the finality of the determination and the right of the highway vehicle operator/fueler to petition for a redetermination.

(b) A penalty of 25 percent of the amount of tax or five hundred dollars ($500), whichever is greater, shall be added to the tax.

(c) If both the penalty specified in this section and in Section 7405 are otherwise applicable, only the penalty totaling the greatest amount shall be imposed, and, the penalty specified in this section shall be imposed only if the amount of penalty exceeds any other applicable penalty.

(d) Where the board determines that the sale, delivery into the fuel tank of a motor vehicle fuel-powered highway vehicle, or sale and delivery into the fuel tank of a motor vehicle fuel-powered highway vehicle of untaxed motor vehicle fuel was due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty. A person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the request for relief is based.

(e) All administrative provisions contained in this part that apply to a supplier shall also be applicable to a highway vehicle operator/fueler.

SEC. 35. Section 8101 of the Revenue and Taxation Code is amended to read:

8101. The following persons who have paid a tax for motor vehicle fuel, either directly or to the vendor from whom it was purchased, or indirectly by the adding of the amount of the tax to the price of the fuel, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax:

(a) Any person who buys and uses the motor vehicle fuel for purposes other than operating motor vehicles upon the public highways of the state, except vehicles subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, which are used for recreational purposes or are rented or leased for recreational purposes, and, on and after July 1, 1974, except motor vehicles subject to registration under Division 3 (commencing with Section 4000) of the Vehicle Code while engaged in off-highway recreational use.

(b) Any person who exports the motor vehicle fuel for use outside of this state. Motor vehicle fuel carried from this state in the fuel tank of a motor vehicle or aircraft is not deemed to be exported from this state unless the motor vehicle fuel becomes subject to tax as an ''import'' under the laws of the destination state.

(c) Any person who sells the motor vehicle fuel to the armed forces of the United States for use in ships or aircraft or for use outside this state, under circumstances that would have entitled him or her to an exemption from the payment of the tax under Section 7401 had he or she been the supplier of this fuel.

(d) Any person who buys and uses the motor vehicle fuel in any construction equipment which is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(e) Any supplier who sells motor vehicle fuel which is sold to any consulate officer or consulate employee under circumstances which would have entitled the supplier to an exemption under paragraph (4) of subdivision (a) of Section 7401 if the supplier had sold the motor vehicle fuel directly to the consulate officer or consulate employee.

(f) Any supplier who removes motor vehicle fuel at a rack and pays tax on that removal or who purchases tax-paid motor vehicle fuel outside the bulk transfer/terminal system and then delivers the tax-paid motor vehicle fuel to another approved terminal from which that supplier subsequently removes the tax-paid motor vehicle fuel at the terminal rack, but only to the extent that the supplier can show that tax on the same amount of motor vehicle fuel has been paid more than one time by the same supplier.

(g) Any supplier who purchases tax-paid motor vehicle fuel in the bulk transfer/terminal system and subsequently removes the tax-paid motor vehicle fuel at the terminal rack, but only to the extent that the supplier can show that tax on the same amount of motor vehicle fuel has been paid more than one time by the same supplier. This subdivision applies only to those purchases made on or after January 1, 2002.

SEC. 36. Section 8106.8 is added to the Revenue and Taxation Code, to read:

8106.8. In lieu of the collection and refund of the tax on tax-paid motor vehicle fuel removed at a terminal rack by a supplier who is entitled to claim a refund of tax under subdivision (f) or (g) of Section 8101, credit may be given the supplier upon the supplier's tax return. The amount of tax and refund shall be determined in accordance with such rules and regulations as the board may prescribe.

SEC. 37. Section 8126 of the Revenue and Taxation Code is amended to read:

8126. If the board determines that any amount not required to be paid under this part has been paid by any person to the state, the board shall set forth that fact in its records and certify the amount collected in excess of the amount legally due and the person from whom it was collected and certify the amount to the Controller for credit or refund. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 38. Section 60015 of the Revenue and Taxation Code is amended to read:

60015. ''Diesel fuel registrant'' includes any enterer, positionholder, refiner, throughputter, or terminal operator, that is licensed as a supplier pursuant to Section 60131.

SEC. 39. Section 60022 of the Revenue and Taxation Code is amended to read:

60022. ''Diesel fuel'' means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle.

However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle. ''Diesel fuel'' does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

SEC. 39.5. Section 60022 of the Revenue and Taxation Code is amended to read:

60022. (a) ''Diesel fuel'' means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle.

(b) ''Diesel fuel'' does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(c) ''Diesel fuel'' does not include the water in a diesel fuel and water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive that causes the water droplets to remain suspended within the diesel fuel, provided the diesel fuel emulsion meets standards set by the California Air Resources Board.

SEC. 40. Section 60025 is added to the Revenue and Taxation Code, to read:

60025. ''Gallon'' means the United States gallon of 231 cubic inches or the volumetric gallon adjusted to 60 degrees Fahrenheit when the invoice and settlement are made on the temperature corrected gallonage.

SEC. 41. Section 60027 of the Revenue and Taxation Code is amended to read:

60027. ''Qualified highway vehicle operator'' means any person licensed as a qualified highway vehicle operator that owns, operates, or otherwise controls a diesel-powered highway vehicle and delivers, or causes to be delivered, diesel fuel or any liquid into the fuel tank of a diesel-powered highway vehicle and is qualified to use dyed diesel fuel on the highway by the Internal Revenue Service under Section 48.4082-4 of Title 26 of the Code of Federal Regulations.

SEC. 42. Section 60034 of the Revenue and Taxation Code is amended to read:

60034. ''Highway vehicle operator/fueler'' includes:

(a) Any person, other than a qualified highway vehicle operator, that owns, operates, or otherwise controls a diesel-powered highway vehicle and delivers, or causes to be delivered, diesel fuel or any liquid into the fuel tank of a diesel-powered highway vehicle; or

(b) Any person who sells diesel fuel on which a claim for refund has been allowed, or who sells and delivers or causes to be delivered in the fuel tank of a diesel-powered highway vehicle dyed diesel fuel or any liquid on which tax has not been imposed.

SEC. 43. Section 60047 is added to the Revenue and Taxation Code, to read:

60047. ''Pipeline'' means a fuel distribution system that moves diesel fuel, in the bulk, through a pipe, from a refinery to a terminal, from a terminal to another terminal, from a vessel to a terminal, or from a refinery or terminal to a vessel.

SEC. 44. Section 60047.1 is added to the Revenue and Taxation Code, to read:

60047.1. ''Pipeline operator'' includes any person that owns, operates, or otherwise controls a pipeline.

SEC. 45. Section 60048 is added to the Revenue and Taxation Code, to read:

60048. ''Sale'' means:

(a) The transfer of title to diesel fuel (other than diesel fuel in a terminal) to a buyer for consideration, which may consist of money, services, or other property.

(b) The transfer of the inventory position in the diesel fuel in a terminal if the buyer becomes the positionholder with respect to the diesel fuel.

SEC. 46. Section 60048.1 is added to the Revenue and Taxation Code, to read:

60048.1. ''Tax-paid fuel'' or ''tax paid'' means the gallons of diesel fuel acquired on either a temperature corrected or volumetric basis on which the tax in Section 60050 has been imposed at the time of or prior to the acquisition by the supplier or person.

SEC. 47. Section 60049 is added to the Revenue and Taxation Code, to read:

60049. ''Vessel'' means a waterborne vessel used for transporting diesel fuel.

SEC. 48. Section 60049.1 is added to the Revenue and Taxation Code, to read:

60049.1. ''Vessel operator'' means any person that operates or otherwise controls a vessel.

SEC. 49. Section 60052 of the Revenue and Taxation Code is amended to read:

60052. The tax specified in Section 60050 is also imposed on all of the following:

(a) The removal of diesel fuel in this state from any refinery if either of the following applies:

(1) The removal is by bulk transfer and the refiner or the owner of the diesel fuel immediately before the removal is not a diesel fuel registrant.

(2) The removal is at the refinery rack.

(b) The entry of diesel fuel into this state for sale, consumption, use, or warehousing if either of the following applies:

(1) The entry is by bulk transfer and the enterer is not a diesel fuel registrant.

(2) The entry is not by bulk transfer.

(c) The removal or sale of diesel fuel in this state to an unregistered person unless there was a prior taxable removal, entry, or sale of the diesel fuel.

(d) The removal or sale of blended diesel fuel in this state by the blender thereof. The number of gallons of blended diesel fuel subject to tax is the difference between the total number of gallons of blended diesel fuel removed or sold and the number of gallons of previously taxed diesel fuel used to produce the blended diesel fuel.

SEC. 50. Section 60056 of the Revenue and Taxation Code is amended to read:

60056. Every qualified highway vehicle operator is liable for the backup tax imposed under subdivision (a) of Section 60058.

SEC. 51. Section 60057 of the Revenue and Taxation Code is amended to read:

60057. Every highway vehicle operator/fueler is liable for the backup tax imposed under Section 60058.

SEC. 52. Section 60058 of the Revenue and Taxation Code is amended to read:

60058. The tax specified in Section 60050 is imposed as a backup tax as follows:

(a) On the delivery into the fuel tank of a diesel-powered highway vehicle of:

(1) Any diesel fuel that contains a dye.

(2) Any diesel fuel on which a claim for refund has been allowed.

(3) Any liquid on which tax has not been imposed by this part, Part 2 (commencing with Section 7301), or Part 3 (commencing with Section 8601).

(b) On the sale of any diesel fuel on which a claim for refund has been allowed.

(c) On the sale and delivery into the fuel tank of a diesel-powered highway vehicle of any diesel fuel that contains a dye or any liquid on which tax has not been imposed by this part, Part 2 (commencing with Section 7301), or Part 3 (commencing with Section 8601).

(d) For the purposes of this section, aircraft jet fuel on which tax has been imposed only pursuant to Part 2, Chapter 2.5 (commencing with Section 7385) shall be deemed to be a liquid on which tax has not been imposed by Part 2 (commencing with Section 7301).

SEC. 53. Section 60063 is added to the Revenue and Taxation Code, to read:

60063. (a) The board may accept from the person who receives diesel fuel removed at a refinery or terminal rack an amount equal to the

tax due and required to be paid by the refiner or positionholder upon the removal of the diesel fuel from a refinery or terminal rack, as if the amount were payment of the tax by the refiner or positionholder under Section 60051 or 60052, as the case may be, if the Internal Revenue Service authorizes payment of federal fuel taxes by the receiving party under a two-party exchange agreement or similar arrangement.

(b) The refiner or positionholder shall remain primarily liable for payment of the tax imposed by Section 60051 or 60052 for diesel fuel removed at the refinery or terminal rack, as the case may be, plus any penalty or interest, until the amount is finally paid and credited to the account of the responsible refiner or positionholder; provided, however, that the board, at its discretion, may relieve the refiner or positionholder from primary liability for payment of tax imposed by Section 7362 or 7363 and hold another person primary liable for the tax if (i) the Internal Revenue Service authorizes payment of fuel taxes by the receiving party under a two-party exchange agreement, and (ii) under the Internal Revenue Service approach to a two-party exchange agreement, another person is primarily liable for payment of the tax, and (iii) the board elects to follow the Internal Revenue Service approach.

(c) The board may adopt those regulations as it deems appropriate to carry out this section.

SEC. 54. Section 60064 is added to the Revenue and Taxation Code, to read:

60064. (a) For the purpose of the proper administration of this part and to prevent evasion of the tax, unless the contrary is established, it shall be presumed that all diesel fuel received at a terminal in this state, imported into this state, or refined and placed into storage for removal at a refinery in this state or blended diesel fuel blended or converted in this state and no longer in the possession of the supplier has been removed or sold by the supplier.

(b) The presumption shall not apply if the supplier proves to the satisfaction of the board that both:

(1) The supplier has exercised ordinary care in entrusting control or possession of the diesel fuel to another person.

(2) The person to whom the supplier has entrusted the control or possession of the diesel fuel as bailee, consignee, employee, or agent, caused a removal or sale by the act of converting to that person's own use the diesel fuel so entrusted to that person by the supplier.

(c) If the supplier proves to the satisfaction of the board, the existence of both of the circumstances in paragraphs (1) and (2) of subdivision (b), then the person who converted the diesel fuel to his or her own use, as well as any other person receiving that diesel fuel with the knowledge that it was so converted, shall be liable for payment of the tax imposed upon the removal or sale, and all those persons shall be considered as

suppliers for the purpose of Chapter 6 (commencing with Section 60201) or Chapter 7 (commencing with Section 60401) of this part.

SEC. 55. Section 60101 of the Revenue and Taxation Code is amended to read:

60101. (a) Diesel fuel that is required to be dyed satisfies the dyeing requirement of this part if it meets the dyeing requirements of the United States Environmental Protection Agency and the Internal Revenue Service, including, but not limited to, requirements respecting type, dosage, and timing.

(b) Marking shall meet the marking requirements of the Internal Revenue Service.

(c) No person shall operate or maintain a motor vehicle on any public highway in this state with dyed diesel fuel in the fuel supply tank. This subdivision does not apply to uses of dyed diesel fuel on the highway that are lawful under the Internal Revenue Code or regulations promulgated thereunder, if the person is registered as a qualified highway vehicle operator, exempt bus operator, or government entity, or if the person is an intercity bus operator, as defined in Section 60046, who is registered as an interstate user under this part.

SEC. 56. Section 60105 of the Revenue and Taxation Code is amended to read:

60105. (a) A penalty applies to any person who does any of the following:

(1) Sells or holds for sale dyed diesel fuel for any use that the person knows or has reason to know is a taxable use of the diesel fuel.

(2) Holds for use or uses dyed diesel fuel for a use other than a nontaxable use and that person knew, or had reason to know, that the diesel fuel was so dyed.

(3) Knowingly alters, or attempts to alter, the strength or composition of any dye or marker in any dyed diesel fuel.

(4) Fails to provide or post the required notice with respect to any dyed diesel fuel. The failure to provide or post the required notice creates a presumption that the person so failing knows the diesel fuel will be used for a taxable use.

(b) The amount of the penalty for each violation specified in subdivision (a) is the greater of:

(1) Ten dollars ($10) for every gallon of diesel fuel involved, or

(2) The product of one thousand dollars ($1,000), and the total number of penalties, including the penalty currently being determined, imposed by this section on the person (or a related person or any predecessor of that person or related person).

(c) If a penalty is imposed under this section on any business entity, each officer, employee, or agent of the entity, who participated in any act

giving rise to the penalty shall be jointly and severally liable with the entity for the penalty.

SEC. 57. Section 60106.2 of the Revenue and Taxation Code is amended to read:

60106.2. If a purchaser gives a Section 60106 exemption certificate to a supplier that the diesel fuel purchased will be used in a manner or for a purpose entitling the supplier to regard the removal as exempt from the taxes as provided in paragraph (7) of subdivision (a) of Section 60100 and sells the diesel fuel or uses the diesel fuel in some other manner or for some other purpose, the purchaser shall be liable for payment of the tax under Chapter 2 (commencing with Section 60050) of this part. The tax, applicable penalties, and interest shall become due and payable and shall be ascertained and determined in the same manner as the backup tax under Section 60361.5.

SEC. 58. Section 60106.3 of the Revenue and Taxation Code is amended to read:

60106.3. (a) Any person, including any officer or employee of a corporation, who gives a Section 60106 exemption certificate for diesel fuel that he or she knows at the time of purchase is not to be used by him or her or the corporation in the manner or for the purpose entitling the exemption for the purpose of evading payment to the supplier of the amount of the tax applicable to the transaction is guilty of a misdemeanor punishable as provided in Section 60706 or a felony punishable as provided in Section 60707.

(b) Any person, including any officer or employee of a corporation, who gives a certificate for diesel fuel pursuant to Section 60106 that he or she knows at the time of purchase is not to be used by him or her or the corporation in the manner or for the purpose entitling the exemption is liable to the state for the amount of tax that would be due if he or she had not given that certificate. In addition to the tax, the person shall be liable to the state for a penalty of 25 percent of the tax or one thousand dollars ($1,000), whichever is greater, for each certificate issued for personal gain or to evade the payment of taxes.

SEC. 59. Section 60107 of the Revenue and Taxation Code is amended to read:

60107. (a) For the privilege of purchasing diesel fuel exempt from taxes under paragraph (7) of subdivision (a) of Section 60100, each train operator must make a report to the board showing:

(1) The name and permit number of the supplier from whom it purchased undyed diesel fuel and the number of gallons of undyed diesel fuel purchased that is exempt from the tax.

(2) Any other information required by the board.

(b) Each train operator shall prepare and file with the board on forms prescribed by the board a report showing the information in subdivision

(a) during each quarterly reporting period. The report shall be filed with the board on or before the last day of the calendar month following the close of the quarterly period to which it relates. To facilitate the administration of this part, the board may require the filing of these reports for other than quarterly periods.

(c) The board may revoke the train operator's permit provided for in Section 60106.1 due to the filing of inaccurate or improper reports.

(d) All of the administrative provisions of this part relating to a supplier shall be applicable to a train operator.

SEC. 60. Section 60135 is added to the Revenue and Taxation Code, to read:

60135. Every person before becoming a pipeline operator or a vessel operator shall apply to the board for a license on forms prescribed by the board. A pipeline operator license or a vessel operator license shall be issued only to a person who is a pipeline operator or a vessel operator as defined in Sections 60047.1 and 60049.1. It is unlawful for a person to act as a pipeline operator or a vessel operator without first securing a license.

SEC. 61. Section 60161 of the Revenue and Taxation Code is amended to read:

60161. (a) Every person before becoming a qualified highway vehicle operator shall apply to the board for a license authorizing the person to engage in business as a qualified highway vehicle operator. A license shall be issued only to a person who is qualified to use dyed diesel fuel on the highway by the Internal Revenue Service under Section 48.4082-4 of Title 26 of the Code of Federal Regulations.

(b) If the person is already licensed as an exempt bus operator, government entity, or interstate user, the person does not need a separate qualified highway vehicle operator's license.

SEC. 62. Section 60163 of the Revenue and Taxation Code is amended to read:

60163. Before granting a license authorizing a person to report the backup tax as a qualified highway vehicle operator, the board may require the person to file with the board security pursuant to Section 60401. The license issued to any qualified highway vehicle operator is not transferable and is valid until canceled or revoked.

SEC. 63. Section 60181 of the Revenue and Taxation Code is amended to read:

60181. The board may revoke any of the following licenses:

(a) Any supplier's license held by a person who does not engage in, or who discontinues, the removal, entry, or sale of diesel fuel, producing of blended diesel fuel, owning or holding inventory position of diesel fuel, or owning or operating a refinery or terminal as any of the following:

(1) A blender, as defined in Section 60012.
(2) An enterer, as defined in Section 60013.
(3) A positionholder, as defined in Section 60010.
(4) A refiner, as defined in Section 60011.
(5) A terminal operator, as defined in Section 60009.
(6) A throughputter, as defined in Section 60035.

(b) Any interstate user's license held by a person who does not engage in, or who discontinues, using diesel fuel as an ''interstate user'' as defined in Section 60111.

(c) Any ultimate vendor's license held by a person who does not engage in, or who discontinues, selling undyed diesel fuel as an ''ultimate vendor'' as defined in Section 60036.

(d) Any exempt bus operator's license held by a person who does not engage in, or who discontinues, using diesel fuel as an ''exempt bus operator'' as defined in Section 60040.

(e) Any qualified highway vehicle operator's license held by a person who does not engage in, or who discontinues, the delivery of diesel fuel subject to the backup tax into fuel tanks of diesel-powered highway vehicles as a qualified highway vehicle operator as defined in Section 60027.

(f) Any government entity's license held by a government entity that does not engage in, or that discontinues using diesel fuel in, the operation of a diesel-powered highway vehicle upon the state's highways.

SEC. 64. Section 60203 of the Revenue and Taxation Code is repealed.

SEC. 65. Section 60204.5 is added to the Revenue and Taxation Code, to read:

60204.5. (a) Each pipeline operator and vessel operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, all of the following:

(1) The amount of diesel fuel delivered to each terminal or refinery.
(2) The location of the terminal or refinery where the diesel fuel was delivered.
(3) The date of delivery.
(4) Any other information required by the board for the proper administration of this part. The pipeline operator and vessel operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) Upon written approval of the board, a pipeline operator and vessel operator may satisfy the requirements of subdivision (a) by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the pipeline operator and vessel operator under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board may, in its sole discretion, rescind its approval and require a pipeline operator and vessel operator to file reports as specified in subdivision (a).

SEC. 66. Section 60206 of the Revenue and Taxation Code is amended to read:

60206. Each qualified highway vehicle operator shall prepare and file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the total number of gallons of diesel fuel subject to the backup tax that was delivered into the fuel tank of a diesel-powered highway vehicle within this state during each calendar month, or the monthly period ended during that calendar month as the board may authorize, the amount of tax due for the month covered by the return, and any other information as the board deems necessary for the proper administration of this part. The person shall file the return on or before the last day of the calendar month following the monthly period to which it relates, together with a remittance payable to the board for the amount of tax due for that period. To facilitate the administration of this part, the board may require the filing of the returns for other than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 67. Section 60211 of the Revenue and Taxation Code is amended to read:

60211. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 60207, 60208, 60250, 60302, and 60339.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases the claim for relief.

SEC. 68. Section 60253 is added to the Revenue and Taxation Code, to read:

60253. (a) Any return, report, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

(d) Upon written approval of the board, a person may satisfy the requirements of subdivision (a) by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the person under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board, in its sole discretion, may rescind its approval and require a person to file reports as specified in subdivision (a).

SEC. 69. Section 60360 of the Revenue and Taxation Code is amended to read:

60360. If any person becomes a supplier, exempt bus operator, government entity, qualified highway vehicle operator, or interstate user without first securing a license, the tax, and applicable penalties and interest, if any, become immediately due and payable on account of all diesel fuel removed, entered, sold, delivered, or used by him or her.

SEC. 70. Section 60361.5 is added to the Revenue and Taxation Code, to read:

60361.5. (a) Except in the case of a qualified highway vehicle operator, the backup tax imposed under Section 60058 and any applicable penalties and interest shall be immediately due and payable. The board shall forthwith ascertain as best it may the amount of diesel fuel sold, or delivered into the fuel tank of a diesel fuel-powered highway vehicle, or sold and delivered into the fuel tank of a diesel fuel-powered highway vehicle, and shall determine immediately the tax on the amount and shall give the highway vehicle operator/fueler notice of this determination as prescribed by Section 60340. The determination shall include interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the date the backup tax applies until the date of remittance to the state. The provisions of Section 60331 and 60332 shall be applicable with respect to the finality of the determination and the right of the highway vehicle operator/fueler to petition for a redetermination.

(b) A penalty of 25 percent of the amount of tax or five hundred dollars ($500), whichever is greater, shall be added to the tax.

(c) If more than one of the penalties specified in this section and Section 60105, 60106.3, or 60503.2 is otherwise applicable, only the

penalty totaling the greatest amount shall be imposed, and, the penalty specified in this section shall be imposed only if the amount of penalty exceeds any other applicable penalty.

(d) Where the board determines that the sale, delivery into the fuel tank of a diesel fuel-powered highway vehicle, or sale and delivery into the fuel tank of a diesel fuel-powered highway vehicle of untaxed diesel fuel was due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty. A person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the request for relief is based.

(e) All administrative provisions contained in this part that apply to a supplier shall also be applicable to a highway vehicle operator/fueler.

SEC. 71. Section 60401 of the Revenue and Taxation Code is amended to read:

60401. The board, whenever it deems it necessary to ensure compliance with this part or any rule or regulation adopted under this part, may require any person to deposit with it any security as it may determine appropriate. The amount of the security shall be fixed by the board but shall not be more than three times the estimated average monthly tax liability of the person. The total amount of security shall not be in excess of one million dollars ($1,000,000) where the person has established to the satisfaction of the board that this security, together with property to which the lien imposed by Section 60445 attaches, is sufficient security to ensure payment of taxes equivalent to three times the estimated average monthly tax liability of the person. The amount of the security may be increased or decreased by the board at any time. Any security in the form of cash or insured deposits in banks and savings and loan institutions shall be held by the board in trust to be used solely in the manner provided for this section and Section 60406. Any security in the form of a bond or bonds shall be duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful performance of all the requirements of this part, and expressly providing for the payment of all taxes, penalties, and other obligations of the person arising out of this part. Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax to the state or any amount of tax required to be collected and paid to the state within the time required.

SEC. 72. Section 60501 of the Revenue and Taxation Code is amended to read:

60501. Persons who have paid a tax for diesel fuel lost, sold, or removed as provided in paragraph (4) of subdivision (a), or used in a nontaxable use, other than on a farm for farming purposes or in an

exempt bus operation, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax.

(a) A claim for refund with respect to diesel fuel is allowed under this section only if all of the following apply:

(1) Tax was imposed on the diesel fuel to which the claim relates.

(2) The claimant bought or produced the diesel fuel and did not sell or resell it in this state except as provided in paragraph (4) of subdivision (a).

(3) The claimant has filed a timely claim for refund that contains the information required under subdivision (b) and the claim is supported by the original invoice showing the purchase. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

(4) The diesel fuel was any of the following:

(A) Used for purposes other than operating motor vehicles upon the public highways of the state.

(B) Exported for use outside of this state. Diesel fuel carried from this state in the fuel tank of a motor vehicle is not deemed to be exported from this state unless the diesel fuel becomes subject to tax as an import under the laws of the destination state.

(C) Used in any construction equipment that is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(D) Used in the operation of a motor vehicle on any highway that is under the jurisdiction of the United States Department of Agriculture and with respect to the use of the highway the claimant pays, or contributes to, the cost of construction or maintenance thereof pursuant to an agreement with, or permission of, the United States Department of Agriculture.

(E) Used in any motor vehicle owned by any county, city and county, city, district, or other political subdivision or public agency when operated by it over any highway constructed and maintained by the United States or any department or agency thereof within a military reservation in this state. If the motor vehicle is operated both over the highway and over a public highway outside the military reservation in a continuous trip the tax shall not be refunded as to that portion of the diesel fuel used to operate the vehicle over the public highway outside the military reservation.

Nothing contained in this section shall be construed as a refund of the tax for the use of diesel fuel in any motor vehicle operated upon a public highway within a military reservation, which highway is constructed or maintained by this state or any political subdivision thereof.

As used in this section, ''military reservation'' includes any establishment of the United States government or any agency thereof used by the armed forces of the United States for military, air, or naval operations, including research projects.

(F) Sold by a supplier to any consulate officer or consulate employee under circumstances which would have entitled the supplier to an exemption under paragraph (6) of subdivision (a) of Section 60100 if the supplier had sold the diesel fuel directly to the consulate officer or consulate employee.

(G) Lost in the ordinary course of handling, transportation, or storage.

(H) Sold by a person to the United States and its agencies and instrumentalities under circumstances that would have entitled that person to an exemption from the payment of diesel fuel tax under Section 60100 had that person been the supplier of this diesel fuel.

(I) Sold by a person to a train operator for use in a diesel-powered train or for other off-highway use under circumstances that would have entitled that person to an exemption from the payment of diesel fuel tax under Section 60100 had that person been the supplier of this diesel fuel.

(J) Removed from an approved terminal at the terminal rack, but only to the extent that the supplier can show that the tax on the same amount of diesel fuel has been paid more than one time by the same supplier.

(b) Each claim for refund under this section shall contain the following information with respect to all of the diesel fuel covered by the claim:

(1) The name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.

(2) A statement by the claimant that the diesel fuel covered by the claim did not contain visible evidence of dye.

(3) A statement, which may appear on the invoice or similar document, by the person that sold the diesel fuel to the claimant that the diesel fuel sold did not contain visible evidence of dye.

(4) The total amount of diesel fuel covered by the claim.

(5) The use made of the diesel fuel covered by the claim described by reference to specific categories listed in paragraph (4) of subdivision (a).

(6) If the diesel fuel covered by the claim was exported, a statement that the claimant has the proof of exportation.

(c) Each claim for refund under this section shall be made on a form prescribed by the board and shall be filed for a calendar year. If, at the close of any of the first three quarters of the calendar year, more than seven hundred fifty dollars ($750) is refundable under this section with respect to diesel fuel used or exported during that quarter or any prior quarter during the calendar year, and for which no other claim has been

filed, a claim may be filed for the quarterly period. To facilitate the administration of this section, the board may require the filing of claims for refund for other than yearly periods.

SEC. 73. Section 60503.1 of the Revenue and Taxation Code is amended to read:

60503.1. If a purchaser gives a Section 60503 exemption certificate to an ultimate vendor to the effect that the diesel fuel purchased will be used on a farm for farming purposes or in an exempt bus operation, and sells the diesel fuel or uses the diesel fuel in some other manner or for some other purpose, the purchaser will be liable for payment of the tax under Chapter 2 (commencing with Section 60050) of this part. The tax, applicable penalties, and interest shall become due and payable and shall be ascertained and determined in the same manner as the backup tax under Section 60361.5.

SEC. 74. Section 60503.2 of the Revenue and Taxation Code is amended to read:

60503.2. (a) Any person, including any officer or employee of a corporation, who gives a Section 60503 exemption certificate for diesel fuel that he or she knows at the time of purchase is not to be used by him or her or the corporation on a farm for farming purposes or in an exempt bus operation, for the purpose of evading payment to the ultimate vendor of the amount of the tax applicable to the transaction, is guilty of either a misdemeanor punishable as provided in Section 60706 or a felony punishable as provided in Section 60707.

(b) Any person, including any officer or employee of a corporation, who gives an exemption certificate for diesel fuel pursuant to Section 60503 that he or she knows at the time of purchase is not to be used by him or her or the corporation on a farm for farming purposes or in an exempt bus operation, is liable to the state for the amount of tax that would be due if he or she had not given that certificate. In addition to the tax, the person shall be liable to the state for a penalty of 25 percent of the tax or one thousand dollars ($1,000), whichever is greater, for each certificate issued for personal gain or to evade the payment of taxes.

SEC. 75. Section 60508.4 is added to the Revenue and Taxation Code, to read:

60508.4. In lieu of the collection and refund of the tax on tax-paid diesel fuel removed at a terminal rack by a supplier who is entitled to claim a refund of tax under subparagraph (J) of paragraph (4) of subdivision (a) of Section 60501, credit may be given the supplier upon the supplier's tax return. The amount of tax and refund shall be determined in accordance with such rules and regulations as the board may prescribe.

SEC. 76. Section 60521 of the Revenue and Taxation Code is amended to read:

60521. If the board determines that any amount not required to be paid under this part has been paid by any person to the state, the board shall set forth that fact in its records and certify the amount paid in excess of the amount legally due and the person by whom the excess was paid to the board or from whom it was collected. The excess amount paid or collected shall be credited on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall either be refunded to the person, or his or her successors, administrators, executors, or assigns, or, if authorized by the board, deducted by the person from any amounts to become due from him or her under this part.

For any amount exceeding fifty thousand dollars ($50,000), the board's proposed determination under this section shall be available as a public record for at least 10 days prior to the effective date of the determination.

SEC. 77. Section 60605 of the Revenue and Taxation Code is amended to read:

60605. (a) Each terminal operator shall keep the following information with respect to each rack removal of diesel fuel at each terminal it operates:

(1) The bill of lading or other shipping document.

(2) The record of whether the diesel fuel was dyed in accordance with the United States Environmental Protection Agency or Internal Revenue Service requirements.

(3) The volume and date of the removal.

(4) The identity of the position holder or position holder's customer.

(5) The identity of the person, such as a common carrier, that physically received the fuel.

(6) Any other information required by the Internal Revenue Service pursuant to Section 48.4101-1 of Title 26 of the Code of Federal Regulations.

(b) The terminal operator shall maintain the information described in this section at the terminal from which the removal occurred for at least three months after the removal to which it relates. Thereafter, the terminal operator shall retain the information at a location controlled by the terminal operator for at least four more years.

SEC. 77.5. Section 39.5 of this bill incorporates amendments to Section 60022 of the Revenue and Taxation Code proposed by this bill and AB 86 of the Second Extraordinary Session. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 60022 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 86 of the Second Extraordinary Session, in which case Section 60022 of the Revenue and Taxation Code, as amended by AB 86 of the Second Extraordinary

Session, shall remain operative only until the operative date of this bill, at which time Section 39.5 of this bill shall become operative, and Section 39 of this bill shall not become operative.

SEC. 78. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 430

An act to amend Sections 1340, 17524, 24976, 33333, 48938, and 81400 of the Education Code, and to amend Sections 12320, 12325, 15364.77, 31966, and 32271 of the Government Code, relating to deposit of funds in credit unions.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 1340 of the Education Code is amended to read:

1340. Notwithstanding any other provision of law to the contrary, the following procedure may be utilized for payroll-related payments as limited in this section. The county superintendent of schools may designate one or more national or state banks, savings and loan associations, or federal or state credit unions with the principal office in this state, if the deposits are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Share Insurance Fund, or other private insurance or guaranty of share accounts that is acceptable to the Commissioner of Financial Institutions, to act as disbursing agents for the county superintendent of schools and for school districts and community colleges in the territory under his or her jurisdiction. The county superintendent of schools may draw orders and requisitions upon the funds of the respective public employers, in favor of the designated institutions, for tax-sheltered annuities, custodial accounts, individual retirement accounts, credit union deductions, insurance plan payments, deferred compensation, withholding taxes, professional dues, and other payroll-related deductions or employer contributions. The county auditor shall follow the procedure with respect to examining and allowing the orders and requisitions set forth in Sections 42639 and

85239. The county superintendent of schools, upon receiving allowed warrants from the county auditor, shall deposit the warrants in the designated institutions. As soon as feasible following deposit, the county superintendent of schools shall furnish the designated institutions with information required to enable disbursement of payments to insurance companies, credit unions, and other recipients, including identification of the employees for whom the payments are to be made, the amount of payment on behalf of each designated employee, and the company to which the payment on behalf of each designated employee is to be made. It shall be the duty of each designated institution to disburse the payments to the recipients entitled thereto by check, bank draft, or other appropriate method, within a reasonable time after receipt of each payment, with necessary information for disbursements, which time period shall not exceed 5 working days. Designated institutions receiving deposits and making disbursements, and the county superintendent of schools, shall be deemed to be agents of the respective public employers, for payment of annuities on behalf of their respective employees, and for other payments as specified, and the moneys received by the designated institutions shall be deemed to be deposits of the county superintendents of schools. Security for the deposits shall be furnished as required by the laws of this state. The county superintendent of schools may directly prepare the information and necessary checks, bank drafts, or other appropriate instruments, on the account or accounts within the designated institutions, providing that payment to recipients entitled thereto with required information is made within the timeframe specified.

SEC. 2. Section 17524 of the Education Code is amended to read:

17524. (a) After considering all proposals submitted, the governing board of the school district may, subject to Section 17525, select the plan or proposal that best meets the needs of the school district and enter into a contract incorporating that plan or proposal either as submitted or as revised by the governing board of the school district. However, the governing board shall not approve any proposal nor enter into a lease or contract incorporating a proposal until the governing board has submitted the proposal to the State Board of Education, and the State Board of Education has approved the proposal. The State Board of Education shall, within 45 days of the date of submission, notify the governing board of its approval or disapproval.

(b) The governing board shall require any person, firm, or corporation with whom it enters into a lease or agreement pursuant to this article to file one of the following, as determined by the governing board:

(1) A bond for the performance of the lease or agreement.

(2) An irrevocable letter of credit issued by a state or national bank or a federal or state credit union for the performance of the lease or agreement.

SEC. 3. Section 24976 of the Education Code is amended to read:

24976. (a) The Teachers' Deferred Compensation Fund is hereby established to serve as the repository of funds for the deferred compensation plans administered by the system pursuant to this chapter. Notwithstanding any other provision of law, the system may retain a bank or trust company, or a credit union, to serve as custodian of the moneys of the Teachers' Deferred Compensation Fund and to provide for safekeeping, recordkeeping, delivery, securities valuation, or investment performance reporting services, or services in connection with investment of the Teachers' Deferred Compensation Fund.

(b) The Teachers' Deferred Compensation Fund shall consist of the following sources and receipts, and disbursements shall be accounted for as set forth below:

(1) Premiums determined by the system and paid by participating employers and employees for the cost of administering the deferred compensation plan.

(2) Asset management fees as determined by the system assessed against investment earnings of investment option or of other investment funds. These fees shall be disclosed to employees participating in the deferred compensation plan.

(3) Compensation deferrals to be paid in monthly installments by employers sponsoring deferred compensation plans described in Section 24975 for investment by the system. The moneys shall be deposited in the investment corpus account within the Teachers' Deferred Compensation Fund and invested in accordance with the investment options selected by the participating employee.

(4) All moneys in the Teachers' Deferred Compensation Fund for disbursement to participating employees shall be continuously appropriated without regard to fiscal year. Disbursements to participating employees shall be paid from a disbursement account within the Teachers' Deferred Compensation Fund in accordance with applicable federal law pertaining to deferred compensation plans.

(5) Income, of whatever nature, earned on the Teachers' Deferred Compensation Fund shall be credited to the appropriate account. The accounts of participating employees of the employer shall be individually posted to reflect amounts of compensation deferred and investment gains and losses. A periodic statement shall be given to each participating employee.

(6) The system shall have exclusive control of the administration and investment of the Teachers' Deferred Compensation Fund.

(7) All of the system's costs of administering the deferred compensation plans shall be recovered from the employees who participate in the plans or assets of the Teachers' Deferred Compensation Fund in a manner acceptable to the board.

SEC. 4. Section 33333 of the Education Code is amended to read:

33333. Money received under Section 33332 may, with the approval of the Director of Finance, be deposited by the Director of Education to the credit of the department or of the school or institution designated by him or her, in accounts in banks, or credit unions, or transmitted by him or her to the State Treasurer for deposit in trust accounts. Withdrawals may be made from the bank or credit union account or trust account by the Director of Education or any employee of the Department of Education authorized by him or her to make withdrawals therefrom.

SEC. 5. Section 48938 of the Education Code is amended to read:

48938. In schools or classes for adults, regional occupational centers or programs, or in elementary, continuation, or special education schools in which the student body is not organized, the governing board may appoint an employee or official to act as trustee for student body funds and to receive these funds in accordance with procedures established by the board. These funds shall be deposited in a bank, a savings and loan association, a credit union, or any combination of these financial institutions, approved by the board and shall be expended subject to the approval of the appointed employee or official and also subject to the procedure that may be established by the board.

SEC. 6. Section 81400 of the Education Code is amended to read:

81400. (a) After considering all proposals submitted, the governing board of the community college district shall have the authority, subject to the provisions of Section 81401, to select the plan or proposal which best meets the needs of the district and to enter into a contract incorporating that plan or proposal either as submitted or as revised by the district's governing board.

(b) The governing board shall require any person, firm or corporation with whom it enters into a lease or agreement pursuant to this article to file one of the following, as determined by the governing board:

(1) A bond for the performance of the lease or agreement.

(2) An irrevocable letter of credit issued by a state or national bank, or federal or state credit union, for the performance of the lease or agreement.

SEC. 7. Section 12320 of the Government Code is amended to read:

12320. The Treasurer shall receive and keep in the vaults of the State Treasury or deposit in banks or credit unions all moneys belonging to the state, not required to be received and kept by some other person. Bonds, and other securities or investments belonging to the state, except those

of the Public Employees' Retirement System and the State Teachers' Retirement System, shall be received by the Treasurer and kept in the vaults of the State Treasury or may be deposited by the State Treasurer for safekeeping with any federal reserve bank or any branch thereof, or with any trust company, or the trust department of any state or national bank located in a city designated as a reserve or central reserve city by the Board of Governors of the Federal Reserve System.

SEC. 8. Section 12325 of the Government Code is amended to read:

12325. The Treasurer may attach to or indorse upon warrants drawn by the Controller an order directing payment by any bank or credit union in which money of the state is on deposit. Upon presentation for payment, the person to whom it is paid shall receipt therefor in the manner customary in the payment of bank or credit union checks. The Treasurer shall deliver daily to the Controller all canceled warrants, taking the Controller's receipt therefor.

SEC. 9. Section 15364.77 of the Government Code is amended to read:

15364.77. Notwithstanding any other provision of law, upon the approval of the secretary, the director of an overseas trade office may establish and maintain a checking account for depositing and withdrawing funds appropriated for the use of the trade office, in either of the following:

(a) A bank located and qualified to do business in the country in which the trade office is established and that is, under California law, a branch of a state or national bank located in this state, or a foreign bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1 of the Financial Code to maintain a branch office in California, or that is authorized under federal law to maintain a federal branch in California.

(b) A credit union located in this state, or that is located and qualified to do business in the country in which the trade office is established and that is, under California law, a branch of a credit union located in this state.

SEC. 9.5. Section 15364.77 of the Government Code is amended to read:

15364.77. Notwithstanding any other provision of law, upon the approval of the secretary, the director of an international trade and investment office may establish and maintain a checking account for depositing and withdrawing funds appropriated for the use of the office, in either of the following:

(a) A bank located and qualified to do business in the country in which the office is established and that is, under California law, a branch of a state or national bank located in this state, or a foreign bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 of

Division 1 of the Financial Code to maintain a branch office in California, or that is authorized under federal law to maintain a federal branch in California.

(b) A credit union located in this state, or that is located and qualified to do business in the country in which the trade office is established and that is, under California law, a branch of a credit union located in this state.

SEC. 10. Section 31966 of the Government Code is amended to read:

31966. The board shall invest and reinvest the funds of the system, and may from time to time sell any securities held by it and invest and reinvest the proceeds therefrom and all unappropriated income of the funds. All funds received by it not required for current disbursements shall be invested only in:

(a) Securities that are legal for savings bank investments or that have been certified as legal investments for savings banks pursuant to Division 10 (commencing with Section 20000) of the Water Code, or any bonds which, pursuant to the statutes or laws providing for the issuance of those bonds are entitled to the same force or value or use as bonds issued by any municipality, or any bonds issued pursuant to those acts, statutes or laws of this state wherein the law specifically states by reference or otherwise that the bonds shall be legal investments for either savings banks, insurance companies, all trust funds, state school funds and any funds that may be invested in bonds of cities, counties, cities and counties, school districts, or municipalities in the state, or any bonds that have been investigated and approved by a commission or board now or hereafter authorized by law to conduct that investigation and give that approval and by authority of which those bonds are declared to be legal investments for insurers.

(b) Obligations issued pursuant to Title IV of the National Housing Act, approved June 27, 1934.

(c) Shares, share accounts, or investment certificates of any savings and loan association that has the protection provided by Title IV of the National Housing Act, approved June 27, 1934, to the extent of that insurance protection.

(d) Deposits at interest in any state or national bank doing business with the county pursuant to the law authorizing and controlling the deposit of public funds in banks.

(e) Shares, share accounts, or certificates of funds of a credit union that has the protection provided by the National Credit Union Share Insurance Fund or other private insurance or guaranty of share accounts that is acceptable to the Commissioner of Financial Institutions.

SEC. 11. Section 32271 of the Government Code is amended to read:

32271. The board shall invest and reinvest the funds of the system, and may from time to time sell and invest and reinvest the proceeds of any securities held by it and invest and reinvest all unappropriated income of the funds. All funds received by it not required for current disbursements shall be invested only in:

(a) Securities that are legal for savings bank investments or that have been certified as legal investments for savings banks pursuant to Division 10 (commencing with Section 20000) of the Water Code, or any bonds which, pursuant to the statutes or laws providing for the issuance of those bonds are entitled to the same force or value or use as bonds issued by any municipality, or any bonds issued pursuant to those acts, statutes or laws of this state wherein that law specifically states by reference or otherwise that the bonds shall be legal investments for either savings banks, insurance companies, all trust funds, state school funds and any funds that may be invested in bonds of cities, counties, cities and counties, school districts, or municipalities in the state, or any bonds that have been investigated and approved by a commission or board now or hereafter authorized by law to conduct that investigation and give that approval and by authority of which those bonds are declared to be legal investments for insurers.

(b) Deposits at interest in any state or national bank doing business with the county pursuant to law authorizing and controlling the deposit of public funds in banks.

(c) Shares, share accounts, or certificates of funds of a credit union that has the protection provided by the National Credit Union Share Insurance Fund or other private insurance or guaranty of share accounts that is acceptable to the Commissioner of Financial Institutions.

SEC. 12. Section 9.5 of this bill incorporates amendments to Section 15364.77 of the Government Code proposed by both this bill and AB 968. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 15364.77 of the Government Code, and (3) this bill is enacted after AB 968, in which case Section 9 of this bill shall not become operative.

CHAPTER 431

An act to amend Section 11571.1 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 11571.1 of the Health and Safety Code is amended to read:

11571.1. (a) To effectuate the purposes of this article, the city prosecutor or city attorney may file, in the name of the people, an action for unlawful detainer against any person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure, with respect to a controlled substance purpose. In filing this action, the city prosecutor or city attorney shall utilize the procedures set forth in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, except that in cases filed under this section, the following also shall apply:

(1) Prior to filing an action pursuant to this section, the city prosecutor or city attorney shall give 15 calendar days written notice to the owner, requiring the owner to file an action for the removal of the person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure with respect to a controlled substance purpose. This notice shall include sufficient documentation establishing a violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure and shall be served upon the owner and the tenant in accordance with subdivision (e) of this section. The owner shall, within 15 calendar days of the mailing of the written notice, either provide the city prosecutor or city attorney with all relevant information pertaining to the unlawful detainer case, or provide a written explanation setting forth any safety-related reasons for noncompliance, and an assignment to the city prosecutor or city attorney of the right to bring an unlawful detainer action against the tenant. The assignment shall be on a form provided by the city prosecutor or city attorney and may contain a provision for costs of investigation, discovery, and reasonable attorney's fees, in an amount not to exceed six hundred dollars ($600). If the city prosecutor or city attorney accepts the assignment of the right of the owner to bring the unlawful detainer action, the owner shall retain all other rights and duties, including the handling of the tenant's personal property, following issuance of the writ of possession and its delivery to and execution by the appropriate agency.

(2) Upon the failure of the owner to file an action pursuant to this section, or to respond to the city prosecutor or city attorney as provided in paragraph (1), or having filed an action, if the owner fails to prosecute it diligently and in good faith, the city prosecutor or city attorney may file and prosecute the action, and join the owner as a defendant in the action. This action shall have precedence over any similar proceeding thereafter brought by the owner, or to one previously brought by the

owner and not prosecuted diligently and in good faith. Service of the summons and complaint upon the defendant owner shall be in accordance with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the Code of Civil Procedure.

(3) If a jury or court finds the defendant tenant guilty of unlawful detainer in a case filed pursuant to paragraph (2), the city prosecutor or city attorney may be awarded costs, including the costs of investigation and discovery and reasonable attorney's fees. These costs shall be assessed against the defendant owner, to whom notice was directed pursuant to paragraph (1), and once an abstract of judgment is recorded, it shall constitute a lien on the subject real property.

(4) Nothing in this article shall prevent a local governing body from adopting and enforcing laws, consistent with this article relating to drug abatement. Where local laws duplicate or supplement this article, this article shall be construed as providing alternative remedies and not preempting the field.

(5) Nothing in this article shall prevent a tenant from receiving relief against a forfeiture of a lease pursuant to Section 1179 of the Code of Civil Procedure.

(b) In any proceeding brought under this section, the court may, upon a showing of good cause, issue a partial eviction ordering the removal of any person, including, but not limited to, members of the tenant's household if the court finds that the person has engaged in the activities described in subdivision (a). Persons removed pursuant to this section may be permanently barred from returning to or reentering any portion of the entire premises. The court may further order as an express condition of the tenancy that the remaining tenants shall not give permission to or invite any person who has been removed pursuant to this subdivision to return to or reenter any portion of the entire premises.

(c) For the purposes of this section, ''controlled substance purpose'' means the manufacture, cultivation, importation into the state, transportation, possession, possession for sale, sale, furnishing, administering, or giving away, or providing a place to use or fortification of a place involving, cocaine, phencyclidine, heroin, methamphetamine, or any other controlled substance, in a violation of subdivision (a) of Section 11350, Section 11351, 11351.5, 11352, or 11359, subdivision (a) of Section 11360, or Section 11366, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11383, if the offense occurs on the subject real property and is documented by the observations of a peace officer.

(d) Notwithstanding subdivision (b) of Section 68097.2 of the Government Code, a public entity may waive all or part of the costs incurred in furnishing the testimony of a peace officer in an unlawful detainer action brought pursuant to this section.

(e) The notice and documentation described in paragraph (1) of subdivision (a) shall be given in writing and may be given either by personal delivery or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the owner at the address known to the public entity giving the notice, or as shown on the last equalized assessment roll, if not known. Separate notice and documentation shall be provided to the tenant in accordance with this subdivision. Service by mail shall be deemed to be completed at the time of deposit in the United States mail. Proof of giving the notice may be made by a declaration signed under penalty of perjury by any employee of the public entity which shows service in conformity with this section.

(f) This section shall only apply to the following courts in the County of Los Angeles:

(1) Central District, downtown courthouse.

(2) Northwest District, Van Nuys branch.

(3) West District, West Los Angeles branch.

(4) Southeast District.

(5) South District, Long Beach.

(g) (1) The city attorney and city prosecutor shall provide to the Judicial Council the following information:

(A) The number of notices provided pursuant to paragraph (1) of subdivision (a).

(B) The number of cases filed by an owner, upon notice.

(C) The number of assignments executed by owners to the city attorney or city prosecutor.

(D) The number of three-day or 30-day notices issued by the city attorney or city prosecutor.

(E) The number of cases filed by the city attorney or city prosecutor.

(F) The number of times that an owner is joined as a defendant pursuant to this section.

(G) As to each case filed by an owner, the city attorney, or the city prosecutor, the following information:

(i) The number of judgments (specify whether default, stipulated, or following trial).

(ii) The number of other dispositions (specify disposition).

(iii) The number of defendants represented by counsel.

(iv) Whether the case was a trial by the court or a trial by a jury.

(v) Whether an appeal was taken, and, if so, the result of the appeal.

(vi) The number of cases in which partial eviction was requested, and the number of cases in which the court ordered a partial eviction.

(H) As to each case in which a notice was issued, but no case was filed, the following information:

(i) The number of instances in which a tenant voluntarily vacated the unit.

(ii) The number of instances in which a tenant vacated a unit prior to the providing of the notice.

(iii) The number of other resolutions (specify resolution).

(2) Commencing January 1, 2002, information compiled pursuant to this section shall be reported annually to the Judicial Council on or before January 30 of each year. The Judicial Council shall thereafter submit a brief report to the Senate and Assembly Judiciary Committees on or before January 31, 2004, summarizing the information collected pursuant to this section and evaluating the merits of the pilot program established by this section.

(h) This section shall remain in effect only until January 1, 2005, and as of that date is repealed unless a later enacted statute deletes or extends that date.

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

CHAPTER 432

An act to add Sections 76251 and 76252 to the Government Code, relating to courts.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 76251 is added to the Government Code, to read:

76251. (a) To assist the County of Ventura in the improvement of county juvenile justice facilities or county juvenile justice rehabilitation facilities, the board of supervisors may by resolution establish in the county treasury a Juvenile Justice Facilities Construction Fund pursuant to Section 76105. The moneys in the Juvenile Justice Facilities Construction Fund shall be payable for construction, reconstruction, expansion, improvement, operation, or maintenance of county juvenile justice or county juvenile justice rehabilitation facilities.

(b) The money in the fund may be used to finance any public agency funding mechanism which reduces an obligation incurred in reliance upon the authority granted by this section, including, but not limited to, retirement of bonded indebtedness, loan repayments, and monthly payments involving lease-purchase programs.

(c) Deposits into the fund shall continue to and including either (1) the 20th year after the enactment of this section or (2) whatever period of time is necessary to repay all borrowings or bonded indebtedness incurred by the county to pay for construction provided for in this section, whichever is longer.

SEC. 2. Section 76252 is added to the Government Code, to read:

76252. Deposits to the Courthouse Construction Fund established in Ventura County pursuant to Section 76100 shall continue to and including the 25th year after the initial year in which the surcharge is collected or the 25th year after any borrowings are made for any construction funded pursuant to that section, whichever comes later.

SEC. 3. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, because of unique facts and circumstances applicable to the County of Ventura, insofar as the county requires assistance in expanding and improving its court facilities.

CHAPTER 433

An act to amend Sections 20639, 22970.16, 31835, 31840.8, 75071, 75521, and 75571 of, and to add Sections 75030.9, 75073, 75079.5, 75506.5, 75528, and 75573 to, the Government Code, relating to judges' retirement, and making an appropriation therefor.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 20639 of the Government Code is amended to read:

20639. The compensation earnable during any period of service as a member of the Judges' Retirement System, the Judges' Retirement System II, the Legislators' Retirement System, or the Defined Benefit Program of the State Teachers' Retirement Plan shall be considered compensation earnable as a member of this system for purposes of

computing final compensation for the member, if he or she retires concurrently under both systems.

A member shall be deemed to have retired concurrently under this system and under the Defined Benefit Program of the State Teachers' Retirement Plan, if the member is enrolled as a disabled member under the Defined Benefit Program of the State Teachers' Retirement Plan and for retirement under this system on the same effective date.

SEC. 2. Section 22970.16 of the Government Code is amended to read:

22970.16. (a) ''Eligible employee'' means:

(1) Any person employed by the state, the university, a school employer, or a contracting agency who is a member of the system as defined pursuant to the provisions of Chapter 4 (commencing with Section 20370) of Part 3.

(2) Any legislator, as defined pursuant to Section 9351.3, who is a member of the Legislators' Retirement System.

(3) Any judge, as defined in Sections 75002 and 75502, who is a member of the Judges' Retirement System or the Judges' Retirement System II.

(b) The board shall determine when the members of the system who are employed by a school employer or a contracting agency shall become eligible employees.

SEC. 3. Section 31835 of the Government Code is amended to read:

31835. The average compensation during any period of service as a member of the Public Employees' Retirement System, a member of the Judges' Retirement System or Judges' Retirement System II, a member of a retirement system established under this chapter in another county, a member of the State Teachers' Retirement System, or a member of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, shall be considered compensation earnable by a member for purposes of computing final compensation for that member provided:

(1) The period intervening between active memberships in the respective systems does not exceed 90 days, or 6 months if Section 31840.4 applies. That period shall not include any time during which the member was prohibited by law from becoming a member of the system of another county.

Notwithstanding anything in this chapter to the contrary, the 90-day or 6-month restriction referred to in this section or any other provision of this chapter effecting deferred retirement shall not be applicable to any members who left county or district service prior to October 1, 1949, and subsequently redeposited.

(2) He or she retires concurrently under both systems and is credited with the period of service under that other system at the time of retirement.

The provisions of this section shall be applicable to all members and beneficiaries of the system.

SEC. 4. Section 31840.8 of the Government Code is amended 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, the Judges' Retirement System, and the Judges' Retirement System II.

SEC. 5. Section 75030.9 is added to the Government Code, to read:

75030.9. (a) A judge may elect, by written election filed with the board at any time prior to retirement, to make contributions and receive service credit for all of the time he or she served as a full-time subordinate judicial officer, as defined in Section 71601, prior to becoming a judge, 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.

(b) A judge electing to receive credit for service pursuant to subdivision (a) shall, at the time of filing his or her election, pay to the Judges' Retirement Fund, a sum equal to the actuarial present value of the increase in benefits due to the additional service. The amount shall be determined by the Judges' Retirement System in accordance with this section.

SEC. 6. Section 75071 of the Government Code is amended to read:

75071. (a) Optional settlement one consists of the right to have a retirement allowance paid him or her until his or her death and if he or she dies before he or she receives the amount of his or her accumulated contributions at retirement, to have the balance at death paid to his or her surviving spouse, his or her surviving adult children in equal shares, or his or her estate.

(b) (1) Optional settlement two consists of the right to have a retirement allowance paid him or her until his or her death and thereafter to his or her surviving spouse for life.

(2) If the judge's spouse predeceases the judge and the judge elected this optional settlement to be effective on or after January 1, 2002, the judge's allowance shall be adjusted effective the first day of the month following the death of the spouse to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(3) If the marriage of a retired judge is dissolved or annulled or if the retired judge and his or her spouse are legally separated and the judgment

dividing their community property awards the total interest in this system to the retired judge, and the retired judge elected this optional settlement to be effective on or after January 1, 2002, the retired judge's allowance shall be adjusted effective the first day of the month following the filing of the judgment with the board to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(c) (1) Optional settlement three consists of the right to have a retirement allowance paid him or her until his or her death, and thereafter to have one-half of his or her retirement allowance paid to his or her surviving spouse for life.

(2) If the judge's spouse predeceases the judge and the judge elected this optional settlement to be effective on or after January 1, 2002, the judge's allowance shall be adjusted effective the first day of the month following the death of the spouse to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(3) If the marriage of a retired judge is dissolved or annulled or if the retired judge and his or her spouse are legally separated and the judgment dividing their community property awards the total interest in this system to the retired judge, and the retired judge elected this optional settlement to be effective on or after January 1, 2002, the retired judge's allowance shall be adjusted effective the first day of the month following the filing of the judgment with the board to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(d) Optional settlement four consists of other benefits that are the actuarial equivalent of his or her retirement allowance, that he or she may select subject to the approval of the Judges' Retirement System.

SEC. 7. Section 75073 is added to the Government Code, to read:

75073. A judge who elects to receive optional settlement two or three may concurrently and irrevocably elect to waive the provision for an increase to his or her allowance, as specified in subdivisions (b) and (c) of Section 75071, and shall, instead, have his or her allowance based upon the waiver of this benefit.

SEC. 8. Section 75079.5 is added to the Government Code, to read:

75079.5. Notwithstanding any other provision of this part, a judge who retires on or after January 1, 2002, and who elects to retire pursuant to Section 75025 shall have the right to elect an optional settlement pursuant to Article 3.5 (commencing with Section 75070).

SEC. 9. Section 75506.5 is added to the Government Code, to read:

75506.5. (a) Any judge may elect, by written election filed with the board at any time prior to retirement, to make contributions, and receive service credit for, all of the time he or she served as a full-time subordinate judicial officer, as defined in Section 71601, prior to becoming a judge, 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.

(b) A 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 II, a sum equal to the actuarial present value of the increase in benefits due to the additional service. The amount shall be determined by the board in accordance with this section.

SEC. 10. Section 75521 of the Government Code is amended to read:

75521. (a) A judge who leaves judicial office before accruing at least five years of service shall be paid the amount of his or her contributions to the system, and no other amount.

(b) A judge who leaves judicial office after accruing five or more years of service and who is not eligible to elect to retire under Section 75522 shall be paid the amount of his or her monetary credits determined pursuant to Section 75520, including the credits added under subdivision (b) of that section computed to the last day of the month preceding the date of distribution, and no other amount.

(c) Judges who leave office as described in subdivision (b) are ''retired judges'' for purposes of a concurrent retirement with respect to the benefits provided under Section 20639 and assignment pursuant to Article 2 (commencing with Section 66540) of Chapter 2 and are eligible for benefits provided under Section 22816.31.

(d) After a judge has withdrawn his or her accumulated contributions or the amount of his or her monetary credits upon leaving judicial office, the service shall not count in the event he or she later becomes a judge again, until he or she pays into the Judges' Retirement System II Fund the amount withdrawn, plus interest thereon at the rate of interest then being required to be paid by members of the Public Employees' Retirement System under Section 20750 from the date of withdrawal to the date of payment.

SEC. 11. Section 75528 is added to the Government Code, to read:

75528. A judge must have a minimum of six years of judicial service to be eligible for benefits provided by retiring concurrently from this system and the Public Employees' Retirement System or a retirement system subject to the County Employees Retirement Law of 1937 pursuant to Section 20639 or 31840.8.

SEC. 12. Section 75571 of the Government Code is amended to read:

75571. (a) Optional settlement one consists of the right to have a retirement allowance paid him or her until his or her death and if he or she dies before he or she receives the amount of his or her accumulated contributions at retirement, to have the balance at death paid to his or her surviving spouse or estate.

(b) (1) Optional settlement two consists of the right to have a retirement allowance paid him or her until his or her death and thereafter to his or her surviving spouse for life.

(2) If the judge's spouse predeceases the judge and the judge elected this optional settlement to be effective on or after January 1, 2002, the judge's allowance shall be adjusted effective the first day of the month following the death of the spouse to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(3) If the marriage of a retired judge is dissolved or annulled or if the retired judge and his or her spouse are legally separated and the judgment dividing their community property awards the total interest in this system to the retired judge, and the retired judge elected this optional settlement to be effective on or after January 1, 2002, the retired judge's allowance shall be adjusted effective the first day of the month following the filing of the judgment with the board to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(c) (1) Optional settlement three consists of the right to have a retirement allowance paid him or her until his or her death, and thereafter to have one-half of his or her retirement allowance paid to his or her surviving spouse for life.

(2) If the judge's spouse predeceases the judge and the judge elected this optional settlement to be effective on or after January 1, 2002, the judge's allowance shall be adjusted effective the first day of the month following the death of the spouse to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(3) If the marriage of a retired judge is dissolved or annulled or if the retired judge and his or her spouse are legally separated and the judgment dividing their community property awards the total interest in this system to the retired judge, and the retired judge elected this optional settlement to be effective on or after January 1, 2002, the retired judge's allowance shall be adjusted effective the first day of the month following the filing of the judgment with the board to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(d) Optional settlement four consists of other benefits that are the actuarial equivalent of his or her retirement allowance, that he or she may select subject to the approval of the board.

SEC. 13. Section 75573 is added to the Government Code, to read:

75573. A judge who elects to receive optional settlement two or three may concurrently and irrevocably elect to waive the provision for an increase to his or her allowance, as specified in subdivisions (b) and (c) of Section 75571, and shall, instead, have his or her allowance based upon the waiver of this benefit.

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CHAPTER 434

An act to amend Sections 18205, 18210, 18214, 18214.1, 18214.5, 18251, 18252, 18254, 18300, 18303, 18502, 18502.5, 18503, 18550, 18605, 18610.5, 18620, 18630, 18640, 18670, and 18690 of, to amend and renumber the heading of Part 2.3 (commencing with Section 18897) of Division 13 of, to add Section 18300.25 to, to add Part 2.3 (commencing with Section 18860) to Division 13 of, and to repeal Sections 18203.2, 18203.5, 18208, 18215, 18216.1, 18217, 18219, 18250.5, 18300.5, 18301, 18606, 18607, 18615, 18615.5, and 18616 of, the Health and Safety Code, and to amend Section 5003.4 of the Public Resources Code, relating to mobilehome and special occupancy parks.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 18203.2 of the Health and Safety Code is repealed.

SEC. 2. Section 18203.5 of the Health and Safety Code is repealed.

SEC. 3. Section 18205 of the Health and Safety Code is amended to read:

18205. ''Conditional permit'' means a construction, reconstruction, or operation permit issued by the enforcement agency which may prescribe conditions on the use or occupancy of a mobilehome park, subject to the provisions of this part.

SEC. 4. Section 18208 of the Health and Safety Code is repealed.

SEC. 5. Section 18210 of the Health and Safety Code is amended to read:

18210. ''Lot'' means any area or tract of land or portion of a mobilehome park designated or used for the occupancy of one manufactured home, mobilehome, or recreational vehicle.

SEC. 6. Section 18214 of the Health and Safety Code is amended to read:

18214. (a) ''Mobilehome park'' is any area or tract of land where two or more lots are rented or leased, held out for rent or lease, or were formerly held out for rent or lease and later converted to a subdivision, cooperative, condominium, or other form of resident ownership, to accommodate manufactured homes, mobilehomes, or recreational vehicles used for human habitation. The rental paid for a manufactured home, mobilehome, or a recreational vehicle shall be deemed to include rental for the lot it occupies. This subdivision shall not be construed to authorize the rental of a mobilehome park space for the accommodation of a recreational vehicle in violation of Section 798.22 of the Civil Code.

(b) Notwithstanding subdivision (a), an area or tract of land zoned for agricultural purposes where two or more lots are rented or leased, held out for rent or lease, or provided as a term or condition of employment, to accommodate manufactured homes, mobilehomes, or recreational vehicles used for the purpose of housing 12 or fewer agricultural employees shall not be deemed a mobilehome park.

(c) Notwithstanding subdivision (a), an area or tract of land shall not be deemed a mobilehome park if the structures on it consist of residential structures that are rented or leased, or held out for rent or lease, if those residential structures meet both of the following requirements:

(1) The residential structures are manufactured homes constructed pursuant to the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Secs. 5401 et seq.) or mobilehomes containing two or more dwelling units for human habitation.

(2) Those manufactured homes or mobilehomes have been approved by a city, county, or city and county pursuant to subdivision (d) of Section 17951 as an alternate which is at least the equivalent to the requirements prescribed in the California Building Standards Code or Part 1.5 (commencing with Section 17910) in performance, safety, and for the protection of life and health.

SEC. 7. Section 18214.1 of the Health and Safety Code is amended to read:

18214.1. ''Park'' means any manufactured housing community or mobilehome park.

SEC. 8. Section 18214.5 of the Health and Safety Code is amended to read:

18214.5. ''Permanent building'' means any permanent structure, other than factory-built housing, under the control and ownership of the mobilehome park owner or operator which is not on a lot.

SEC. 9. Section 18215 of the Health and Safety Code is repealed.

SEC. 10. Section 18216.1 of the Health and Safety Code is repealed.

SEC. 11. Section 18217 of the Health and Safety Code is repealed.

SEC. 12. Section 18219 of the Health and Safety Code is repealed.

SEC. 13. Section 18250.5 of the Health and Safety Code is repealed.

SEC. 14. Section 18251 of the Health and Safety Code is amended to read:

18251. The Legislature finds and declares that the standards and requirements established for construction, maintenance, occupancy, use, and design of mobilehome parks should guarantee park residents maximum protection of their investment and a decent living environment. At the same time, the standards and requirements should be flexible enough to accommodate new technologies and to allow designs that reduce costs and enhance the living environment of park residents.

SEC. 15. Section 18252 of the Health and Safety Code is amended to read:

18252. The Legislature finds and declares that the inclusion of specific standards within a statute often precludes the rapid and flexible action needed to correct substandard conditions, and that it is desirable to delete outdated requirements, and to add new and useful requirements designed to protect the health, safety, and general welfare of park residents or to encourage use of new technologies in the development of mobilehome parks.

SEC. 16. Section 18254 of the Health and Safety Code is amended to read:

18254. (a) It is the purpose of this part to accomplish both of the following:

(1) Assure protection of the health, safety, and general welfare of all mobilehome park residents.

(2) Allow modifications in regulations adopted pursuant to this part in a manner consistent with the criteria established in this part.

(b) The regulations adopted by the department pursuant to the authority granted in this part shall provide equivalent or greater protection to residents of mobilehome parks than the statutes and regulations in effect prior to January 1, 1978.

SEC. 17. Section 18300 of the Health and Safety Code is amended to read:

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

(b) Upon 30 days' written notice from the governing body to the department, any city, county, or city and county may assume the responsibility for the enforcement of both this part and Part 2.3 (commencing with Section 18860) and the regulations adopted pursuant to this part and Part 2.3 (commencing with Section 18860) following approval by the department for the assumption.

(c) The department shall adopt regulations that set forth the conditions for assumption and may include required qualifications of local enforcement agencies. The conditions set forth and the qualifications required in the regulations that set forth the conditions for assumption shall relate solely to the ability of local agencies to enforce properly this part and the regulations adopted pursuant to this part. The regulations that set forth the conditions for assumption shall not set requirements for local agencies different than those that the state maintains for its own enforcement program. When assumption is

approved, the department shall transfer the responsibility for enforcement to the city, county, or city and county, together with all records of parks within the jurisdiction of the city, county, or city and county.

(d) (1) In the event of nonenforcement of this part or the regulations adopted pursuant to this part by a city, county, or city and county, the department shall enforce both this part and Part 2.3 (commencing with Section 18860) and the regulations adopted pursuant to this part and Part 2.3 (commencing with Section 18860) in the city, county, or city and county, after the department has given written notice to the governing body of the city, county, or city and county, setting forth in what respects the city, county, or city and county has failed to discharge its responsibility, and the city, county, or city and county has failed to initiate corrective measures to carry out its responsibility within 30 days of the notice.

(2) Where the department determines that the local enforcement agency is not properly enforcing this part or Part 2.3 (commencing with Section 18860), the local enforcement agency may appeal the decision to the director of the department.

(e) Any city, city and county, or county, upon written notice from the governing body to the department, may cancel its assumption of responsibility for the enforcement of both this part and Part 2.3 (commencing with Section 18860). The department, upon receipt of the notice, shall assume responsibility within 30 days.

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

(1) Inside of parks while the city, county, or city and county has assumed responsibility for enforcement of both this part and Part 2.3 (commencing with Section 18860).

(2) Outside of parks.

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

(1) From establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for manufactured homes, mobilehomes, and mobilehome parks within the city, county, or city and county, or establishing types of uses and locations, including family mobilehome parks, senior mobilehome parks, mobilehome condominiums, mobilehome subdivisions, or mobilehome planned unit developments within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules

and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for mobilehome parks.

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

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

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

(5) From authorizing the creation, movement, shifting, or alteration of mobilehome park lot lines as specified in Section 18610.5.

(6) From prescribing and enforcing setback and separation requirements governing the installation of a manufactured home, mobilehome, or mobilehome accessory structure or building installed outside of a mobilehome park.

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

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

(3) A city, including a charter city, county, or city and county, shall not require the setback and separation requirements authorized by paragraph (6) of subdivision (g) to be greater than those permitted by applicable ordinances for other housing forms.

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

(1) Freedom of any conflict of interest.

(2) Qualifications of personnel.

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

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

(5) Establishment of procedures for reimbursement to plan checking agencies for plan review services rendered.

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

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

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

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

SEC. 18. Section 18300.5 of the Health and Safety Code is repealed.

SEC. 19. Section 18300.25 is added to the Health and Safety Code, to read:

18300.25. (a) The provisions of this part shall apply to any portion of a special occupancy park, as defined in Section 18862.43, that is also a mobilehome park, as defined in Section 18214. However, if a portion of a park is permanently dedicated to recreational vehicles, the provisions of Part 2.3 (commencing with Section 18860) apply in that portion of the park.

(b) The department shall not charge an owner of a park that is both a special occupancy park and a mobilehome park more than one annual operating permit fee pursuant to Sections 18502 and 18870.2.

SEC. 20. Section 18301 of the Health and Safety Code is repealed.

SEC. 21. Section 18303 of the Health and Safety Code is amended to read:

18303. This part does not apply to any park owned, operated, and maintained by any of the following:

(a) The federal government.

(b) The state.

(c) Any agency or political subdivision of the state.

(d) Any city, county, or city and county.

SEC. 22. Section 18502 of the Health and Safety Code is amended to read:

18502. Fees as applicable shall be submitted for permits:

(a) Fees for a permit to conduct any construction subject to this part as determined by the schedule of fees adopted by the department.

(b) Plan checking fees equal to one-half of the construction, plumbing, mechanical, and electrical permit fees, except that the minimum fee shall be ten dollars ($10).

(c) (1) An annual operating permit fee of twenty-five dollars ($25) and an additional two dollars ($2) per lot.

(2) An additional annual fee of four dollars ($4) per lot shall be paid to the department or the local enforcement agency, as appropriate, at the time of payment of the annual operating fee. All revenues derived from this fee shall be used exclusively for the inspection of mobilehome parks and mobilehomes to determine compliance with the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200)) and any regulations adopted pursuant to the act.

(3) The Legislature hereby finds and declares that the health and safety of mobilehome park occupants is a matter of public interest and concern and that the fee paid pursuant to paragraph (2) shall be used exclusively for the inspection of mobilehome parks and mobilehomes to ensure that the living conditions of mobilehome park occupants meet the health and safety standards of this part and the regulations adopted pursuant thereto. Therefore, notwithstanding any other provisions of law or local ordinance, rule, regulation, or initiative measure to the contrary, the holder of the permit to operate the mobilehome park shall be entitled

to directly charge one-half of the per lot additional annual fee specified herein to each homeowner, as defined in Section 798.9 of the Civil Code. In that event, the holder of the permit to operate the mobilehome park shall be entitled to directly charge each homeowner for one-half of the per lot additional annual fee at the next billing for the rent and other charges immediately following the payment of the additional fee to the department or local enforcement agency.

(d) Change in name fee or transfer of ownership or possession fee of ten dollars ($10).

(e) Duplicate permit fee or amended permit fee of ten dollars ($10).

(f) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

SEC. 23. Section 18502.5 of the Health and Safety Code is amended to read:

18502.5. (a) There is hereby established in the State Treasury the Mobilehome Parks and Special Occupancy Parks Revolving Fund into which funds collected by the department pursuant to this part and Part 2.3 (commencing with Section 18860) shall be deposited. Moneys deposited in the fund shall be available, upon appropriation, to the department for expenditure in carrying out the provisions of this part and Part 2.3 (commencing with Section 18860). The department shall by January 1, 2003, establish procedures that permit the identification of revenues received by the fund and expenditures paid out of the fund as they relate to mobilehome parks and special occupancy parks.

(b) Notwithstanding any maximum fees set by this part, the department may, by regulation, set fees charged by the department for all permits and for the department's activities mandated by this part. The fees shall be set with the primary objective that the aggregate revenue deposited in the Mobilehome Parks and Special Occupancy Parks Revolving Fund by or on behalf of mobilehome parks and special occupancy parks shall not, on an annual basis, exceed the costs of the department's activities mandated by this part, and the aggregate amount deposited into the fund by or on behalf of recreational vehicle parks shall not, on an annual basis, exceed the costs of the department's activities mandated by Part 2.3 (commencing with Section 18860).

(c) No proposed increase in fees may be effective any sooner than 45 days after written notification thereof is provided to the Chairperson of the Joint Legislative Audit Committee and the State Auditor. Upon receipt of the notification, the State Auditor may prepare a report to the Legislature that indicates whether the proposed increase is appropriate and consistent with this part.

(d) The total money contained in the Mobilehome Parks and Special Occupancy Parks Revolving Fund on June 30 of each fiscal year shall

not exceed the amount of money needed for the department's operating expenses for one year for the enforcement of this part and Part 2.3 (commencing with Section 18860). If the total money contained in the fund exceeds this amount, the department shall make appropriate reductions in the schedule of fees authorized by this section, Section 18870.3, or both.

SEC. 24. Section 18503 of the Health and Safety Code is amended to read:

18503. The department by administrative rule and regulation shall establish a schedule of fees relating to all construction, mechanical, electrical, plumbing, and installation permits. The fees shall apply to and be paid to the enforcement agency. Fees established for construction, mechanical, electrical, and plumbing permits shall be reasonably consistent with the current edition of the Uniform Building Code as published by the International Conference of Building Officials, the Uniform Plumbing Code as published by the International Association of Plumbing and Mechanical Officials, and the National Electrical Code as published by the National Fire Protection Association.

SEC. 25. Section 18550 of the Health and Safety Code is amended to read:

18550. It is unlawful for any person to use or cause, or permit to be used for occupancy, any of the following manufactured homes or mobilehomes wherever the manufactured homes or mobilehomes are located, or recreational vehicles located in mobilehome parks:

(a) Any manufactured home, mobilehome, or recreational vehicle supplied with fuel, gas, water, electricity, or sewage connections, unless the connections and installations conform to regulations of the department.

(b) Any manufactured home, mobilehome, or recreational vehicle that is permanently attached with underpinning or foundation to the ground, except for a manufactured home or mobilehome bearing a department insignia or federal label, that is installed in accordance with this part.

(c) Any manufactured home or mobilehome that does not conform to the registration requirements of the department.

(d) Any manufactured home, mobilehome, or recreational vehicle in an unsafe or unsanitary condition.

(e) Any manufactured home, mobilehome, or recreational vehicle that is structurally unsound and does not protect its occupants against the elements.

SEC. 26. Section 18605 of the Health and Safety Code is amended to read:

18605. The department shall adopt regulations to govern the use and occupancy of manufactured homes, mobilehomes, and recreational

vehicles. These regulations shall establish minimum requirements to protect the health and safety of the occupants and the public, and shall also provide for the repair or abatement of any unsafe or unsanitary condition of the manufactured home, mobilehome, or recreational vehicle or of the electrical, mechanical, or plumbing installations therein.

SEC. 27. Section 18606 of the Health and Safety Code is repealed.

SEC. 28. Section 18607 of the Health and Safety Code is repealed.

SEC. 29. Section 18610.5 of the Health and Safety Code is amended to read:

18610.5. (a) Park lot lines shall not be created, moved, shifted, or altered without the written authorization of the local planning agency and the occupant or occupants, if any, of the lot or lots on which the lot line will be created, moved, shifted, or altered.

(b) No park lot line shall be created, moved, shifted, or altered, if the action will place an occupant of a lot in violation of any separation or space requirements under this part or under any administrative regulation.

SEC. 29.5. Section 18610.5 of the Health and Safety Code is amended to read:

18610.5. (a) No park lot line shall be created, moved, shifted, or altered without a permit issued to the park owner or operator by the enforcement agency.

(b) No park lot line shall be created, moved, shifted, or altered without the written authorization or consent of the occupant or occupants, if any, of the lot or lots on which the lot line will be created, moved, shifted, or altered.

(c) No park lot line shall be created, moved, shifted, or altered, if the action will place an occupant of a lot in violation of any separation or space requirements under this part or under any administrative regulation.

(d) When a park lot line is proposed to be created, moved, shifted, or altered, the enforcement agency may require a park owner or operator to submit to the enforcement agency a detailed plot plan of all lots and the dimensions of each lot affected by the creation of, or change in, lot lines.

SEC. 30. Section 18615 of the Health and Safety Code is repealed.

SEC. 31. Section 18615.5 of the Health and Safety Code is repealed.

SEC. 32. Section 18616 of the Health and Safety Code is repealed.

SEC. 33. Section 18620 of the Health and Safety Code is amended to read:

18620. The department shall adopt regulations regarding the construction of buildings in parks that it determines are reasonably necessary for the protection of life and property and to carry out the purposes of this part. The department shall propose and submit building

standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for the purposes described in this section. The building standards published in the California Building Standards Code and the other regulations adopted by the department shall apply to the construction of all permanent buildings in a park, except in a park in a city, county, or city and county that has adopted and is enforcing a building code with amendments adopted pursuant to Section 17958.5 and which city, county, or city and county is the enforcement agency.

SEC. 34. Section 18630 of the Health and Safety Code is amended to read:

18630. The department shall adopt regulations regarding plumbing in parks that it determines are reasonably necessary for the protection of life and property and to carry out the purposes of this part. The department shall propose and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for the purposes described in this section. The building standards published in the California Building Standards Code and the other regulations adopted by the department shall apply to all plumbing within permanent buildings, except a park in a city, county, or city and county that has adopted and is enforcing a plumbing code with amendments adopted pursuant to Section 17958.5 and which city, county, or city and county is the enforcement agency.

SEC. 35. Section 18640 of the Health and Safety Code is amended to read:

18640. The department shall adopt regulations for toilet, shower, and laundry facilities in parks. The department shall propose and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for the purposes described in this section. The building standards published in the California Building Standards Code and the other regulations adopted by the department shall establish standards and requirements which protect the health, safety, and general welfare of the residents of parks, and shall require proper maintenance of those facilities. The building standards published in the California Building Standards Code and the other regulations adopted by the department shall provide equivalent or greater protection to the residents of parks than the statutes and regulations in effect on December 31, 1977.

SEC. 36. Section 18670 of the Health and Safety Code is amended to read:

18670. The department shall adopt regulations regarding electrical wiring, fixtures, and equipment installed in parks that it determines are reasonably necessary for the protection of life and property and to carry out the purposes of this part. The department shall propose and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for the purposes described in this section.

The building standards published in the California Building Standards Code and the other regulations adopted by the department shall apply to all electrical wiring, fixtures, and equipment installed within permanent buildings, except within a park in a city, county, or city and county that has adopted and is enforcing an electrical code with amendments adopted pursuant to Section 17958.5 and which city, county, or city and county is the enforcement agency.

SEC. 37. Section 18690 of the Health and Safety Code is amended to read:

18690. The department shall adopt regulations regarding fuel gas equipment and installations in parks that it determines are reasonably necessary for the protection of life and property and to carry out the purposes of this part. The department shall propose and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for the purposes described in this section. The building standards published in the California Building Standards Code and the other regulations adopted by the department shall apply to all fuel gas equipment and installations within permanent buildings, except within a park in a city, county, or city and county that has adopted and is enforcing a gas code with amendments adopted pursuant to Section 17958.5 and which city, county, or city and county is the enforcement agency.

SEC. 38. The heading of Part 2.3 (commencing with Section 18897) of Division 13 of the Health and Safety Code is amended and renumbered to read:

PART 2.3. CAMPS

SEC. 39. Part 2.3 (commencing with Section 18860) is added to Division 13 of the Health and Safety Code, to read:

PART 2.3. SPECIAL OCCUPANCY PARKS ACT

CHAPTER 1. GENERAL

18860. This part shall be known and may be cited as the Special Occupancy Parks Act.

18861. (a) The provisions of this part insofar as they are substantially the same as existing statutory provisions relating to the same subject matter shall be construed as restatements and continuations, and not as new enactments.

(b) The provisions of Part 2.1 (commencing with Section 18200) shall govern the construction, installation, maintenance, use, and occupancy of a mobilehome, manufactured home, mobilehome

accessory building or structure, commercial coach, factory-built home, or permanent building in a special occupancy park.

CHAPTER 2. DEFINITIONS

18862. ''Accessory building or structure'' is any awning, cabana, ramada, storage cabinet, storage building, private garage, carport, fence, windbreak or porch, or any residential building or structure established for the use of the occupant of a recreational vehicle on a lot.

18862.1. ''Approved'' when used in connection with any material, appliance, or construction, means meeting the requirements for obtaining the approval of the department.

18862.3. ''Building standard'' means building standard as defined in Section 18909.

18862.5. ''Camping cabin'' means a relocatable hard sided shelter with a floor area less than 400 square feet (37 square meters) without plumbing that is designed to be used within a recreational vehicle park only by a camping party. A camping cabin may contain an electrical system and electrical space conditioning equipment complying with the electrical and mechanical regulations adopted pursuant to this part and supplied by the lot service equipment. A camping cabin may be installed or occupied only in special occupancy parks, as defined by Section 18862.43, or in state parks and other state property pursuant to Chapter 1 (commencing with Section 5001) of Division 5 of the Public Resources Code.

18862.7. ''Camping party'' means a person or group of not more than 10 persons occupying a campsite or ''camping cabin'' for not more than 30 days annually.

18862.9. ''Campsite'' is an area within an incidental camping area occupied by a camping party.

18862.11. ''Commercial coach'' as used in this part has the same meaning as defined in Section 18001.8.

18862.13. ''Conditional permit'' means a construction, reconstruction, or operation permit issued by the enforcement agency which may prescribe conditions on the use or occupancy of a special occupancy park, subject to the provisions of this part.

18862.15. ''Department'' is the Department of Housing and Community Development.

18862.17. ''Enforcement agency'' is the Department of Housing and Community Development, or any city, county, or city and county that has assumed responsibility for the enforcement of this part pursuant to Section 18865 and Part 2.1 (commencing with Section 18200) pursuant to Section 18300.

18862.19. ''Incidental camping area'' is any area or tract of land where camping is incidental to the primary use of the land for agriculture, timber management, or water or power development purposes, and where two or more campsites used for camping are rented or leased or held out for rent or lease. The density of usage shall not exceed 25 camping parties within a radius of 265 feet from any campsite within the incidental camping area.

18862.21. ''Lease'' is an oral or written contract for the use, possession, and occupation of property. It includes rent.

18862.23. ''Lot'' means any area or tract of land or portion of a special occupancy park, designated or used for the occupancy of one manufactured home, mobilehome, recreational vehicle, tent, camp car, or camping party.

18862.25. ''Manufactured home'' shall have the same meaning as defined in Section 18007.

18862.27. ''Mobilehome'' shall have the same meaning as defined in Section 18008.

18862.29. ''Mobilehome park'' shall have the same meaning as used in Section 18214.

18862.30. ''Occupant'' and ''resident'' shall be interchangeable and shall include ''occupant,'' ''resident,'' ''tenant,'' or ''guest'' as used in Chapter 2.6 (commencing with Section 799.20) of the Civil Code.

18862.31. ''Park'' means any special occupancy park.

18862.33. ''Permanent building'' means any permanent structure, other than factory-built housing, under the control and ownership of the special occupancy park owner or operator that is not on a lot.

18862.35. ''Plan checking agency'' means a private entity employing at least one architect or engineer licensed by the state to perform the review of plans and specifications for the construction of special occupancy parks, including buildings and permanently constructed fixtures, utility systems, streets and other regulated facilities, for the purpose of determining compliance with the applicable provisions of this part and the regulations promulgated thereunder. The plan checking agency shall submit to the department a list of all personnel performing plan checking reviews, including the individual's name, California architect or engineer license number and expiration date, and a summary of qualifications.

18862.37. ''Recreational vehicle'' as used in this part has the same meaning as defined in Section 18010.

18862.39. (a) ''Recreational vehicle park'' is any area or tract of land, or a separate designated section within a mobilehome park where two or more lots are rented or leased or held out for rent or lease to owners or users of recreational vehicles, camping cabins, or tents.

(b) Notwithstanding subdivision (a), an area or tract of land zoned for agricultural purposes where two or more lots are rented or leased, or held out for rent or lease, to owners or users of recreational vehicles or tents for the purpose of housing 12 or fewer agricultural employees, shall not be deemed a recreational vehicle park.

18862.41. ''Rent'' is money or other consideration given for the right of use, possession, and occupation of property.

18862.43. ''Special occupancy park'' means a recreational vehicle park, temporary recreational vehicle park, incidental camping area, or tent camp.

18862.45. ''Special purpose commercial coach'' as used in this part has the same meaning as defined in Section 18012.5.

18862.47. (a) ''Temporary recreational vehicle park'' is any area or tract of land where two or more lots are rented or leased or held out for rent or lease to owners or users of recreational vehicles and which is established for one operation not to exceed 11 consecutive days, and is then removed.

(b) Notwithstanding subdivision (a), an area or tract of land zoned for agricultural purposes where two or more lots are rented or leased, or held out for rent or lease, to owners or users of recreational vehicles for the purpose of housing 12 or fewer agricultural employees, shall not be deemed a temporary recreational vehicle park.

18862.49. ''Tent'' is any enclosed structure or shelter fabricated entirely or in major part of cloth, canvas, or similar material supported by a frame.

CHAPTER 3. FINDINGS AND PURPOSES

18863. The Legislature finds and declares that increasing numbers of Californians own and use recreational vehicles for recreation, vacations, and temporary housing. Because these vehicles are highly mobile and use various facilities throughout the state, there is a need for consistent and uniform statewide regulations for special occupancy parks to assure their health, safety, and general welfare, and a decent living environment.

18863.1. The Legislature finds and declares that the standards and requirements established for construction, maintenance, occupancy, use, and design of parks should guarantee park occupants or residents maximum protection of their investment and a decent living environment. At the same time, the standards and requirements should be flexible enough to accommodate new technologies and to allow designs that reduce costs and enhance the living environment of park occupants or residents.

18863.2. The Legislature finds and declares that inclusion of specific standards within a statute often precludes the rapid and flexible action needed to correct substandard conditions, and that it is desirable to delete outdated requirements, and to add new and useful requirements designed to protect the health, safety, and general welfare of park occupants or residents or to encourage use of new technologies in the development of parks.

18863.3. The Legislature finds and declares that the specific requirements relating to construction, maintenance, occupancy, use, and design of parks are best developed by the department in accordance with the criteria established by this part. Placing this responsibility with the department will allow for modifications of specific requirements in a rapid fashion and in a manner responsive to the needs of park occupants or residents and owners.

18863.4. (a) It is the purpose of this part to accomplish both of the following:

(1) Assure protection of the health, safety, and general welfare of all park occupants or residents.

(2) Allow modifications in regulations adopted pursuant to this part in a manner consistent with the criteria established in this part.

(b) The regulations adopted by the department pursuant to the authority granted in this part shall provide equivalent or greater protection to occupants or residents of parks than the statutes and regulations in effect prior to January 1, 1978.

CHAPTER 4. APPLICATION AND SCOPE

18865. (a) This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part. Except as provided in Section 18930, the department may adopt regulations to interpret and make specific this part and, when adopted, the regulations shall apply to all parts of the state.

(b) Upon 30 days' written notice from the governing body to the department, any city, county, or city and county may assume the responsibility for the enforcement of both this part and Part 2.1 (commencing with Section 18200) and the regulations adopted pursuant to this part following approval by the department for the assumption.

(c) The department shall adopt regulations that set forth the conditions for assumption and may include required qualifications of local enforcement agencies. The conditions set forth and the qualifications required in the regulations shall relate solely to the ability of local agencies to enforce properly this part and the regulations adopted pursuant to this part. The regulations shall not set requirements for local

agencies different than those that the state maintains for its own enforcement program. When assumption is approved, the department shall transfer the responsibility for enforcement to the city, county, or city and county, together with all records of special occupancy parks within the jurisdiction of the city, county, or city and county.

(d) (1) In the event of nonenforcement of this part or the regulations adopted pursuant to this part by a city, county, or city and county, the department shall enforce both this part and Part 2.1 (commencing with Section 18200) and the regulations adopted pursuant to this part and Part 2.1 in the city, county, or city and county, after the department has given written notice to the governing body of the city, county, or city and county, setting forth in what respects the city, county, or city and county has failed to discharge its responsibility, and the city, county, or city and county has failed to initiate corrective measures to carry out its responsibility within 30 days of the notice.

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

(e) Any city, city and county, or county, upon written notice from the governing body to the department, may cancel its assumption of responsibility for the enforcement of both this part and Part 2.1 (commencing with Section 18200). The department, upon receipt of the notice, shall assume responsibility within 30 days.

(f) Every city, county, or city and county, within its jurisdiction, shall enforce this part and the regulations adopted pursuant to this part, as they relate to recreational vehicles and to accessory buildings or structures located in both of the following areas: (1) inside of parks where the city, county, or city and county has assumed responsibility for enforcement of both this part and Part 2.1 (commencing with Section 18200), and (2) outside of parks.

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

(1) Establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for special occupancy parks within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for special occupancy parks.

(2) Regulating the construction and use of equipment and facilities located outside of a recreational vehicle used to supply gas, water, or electricity thereto, except facilities owned, operated, and maintained by a public utility, or to dispose of sewage or other waste therefrom when

the facilities are located outside a park for which a permit is required by this part or the regulations adopted pursuant thereto.

(3) Requiring a permit to use a recreational vehicle outside a park for which a permit is required by this part or by regulations adopted pursuant thereto, and require a fee therefor by local ordinance commensurate with the cost of enforcing this part and local ordinance with reference to the use of recreational vehicles, which permit may be refused or revoked if the use violates this part or Part 2 (commencing with Section 18000), any regulations adopted pursuant thereto, or any local ordinance applicable to that use or Part 2.1 (commencing with Section 18200).

(4) Authorizing the creation, movement, shifting, or alteration of park lot lines as specified in Section 18872.1.

(h) A city, including a charter city, county, or city and county, shall not require a new park to include a clubhouse. Recreational facilities, recreational areas, accessory structures, or improvements may be required only to the extent that the facilities or improvements are required in other types of similar recreational facilities, if any, in the city, county, or city and county.

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

(1) Freedom of any conflict of interest.

(2) Qualifications of personnel.

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

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

(5) Establishment of procedures for reimbursement to plan checking agencies for plan review services rendered.

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

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

(j) (1) The department may, by regulation, provide for the qualification of plan checking agencies to perform reviews of plans and specifications for the construction of special occupancy parks and to perform reviews of plans and specifications for the construction of additional buildings or lots, the alteration of buildings, lots, or other installations, in an existing special occupancy park, in areas in which the department is the enforcement agency. The regulations shall specify that

all approved plan checking agencies shall employ at least one architect or engineer, licensed by the state, and that the architect or engineer shall be responsible for all plan review activity specified in this part. Plans approved by department-approved agencies shall be deemed the equivalent of department approval of those plans.

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

18865.05. (a) This part shall also apply to any portion of a mobilehome park that is also a special occupancy park, as defined in Section 18862.43.

(b) The department shall not charge an owner of a park that is both a special occupancy park and a mobilehome park more than one annual operating permit fee pursuant to Sections 18502 and 18870.2.

18865.1. Any person may file an application with the governing body of any city, city and county, or county for a conditional use permit for a special occupancy park. The governing body, or the planning commission if designated by the governing body, shall hold a public hearing on any such application. Notice of the time and place of the hearing, including a general explanation of the matter to be considered and including a general description of the area affected, shall be given at least two weeks before the hearing and shall be published at least once in a newspaper of general circulation, published and circulated in the city, city and county, or county, as the case may be. When any hearing is held on an application for a conditional use permit for a special occupancy park, a staff report with recommendations and the basis for such recommendations shall be included in the record of the hearing. The decision of the governing body shall be final and the reasons for the decision shall be included in the record.

18865.2. (a) In any city, county, or city and county that has imposed a time limitation for occupancy of spaces in special occupancy parks, any special occupancy park owner may apply for an exemption to that limitation. The exemption shall be granted unless the city, county, or city and county makes a substantial finding that based on, but not limited to, the lack of needed overnight or tourist spaces in those special occupancy parks in the city, county, or city and county, that the exemption of the applicant's special occupancy park from the time limitation would cause specific adverse impacts which cannot be mitigated or avoided by providing partial exemptions as set forth in subdivision (b) or by imposing conditions pursuant to subdivision (c).

(b) The requirements of subdivision (a) may be satisfied by partial exemption if either of the following applies:

(1) A number of spaces in a special occupancy park are set aside for short-term occupancy, and the remaining spaces are exempted by the city, county, or city and county from the occupancy limitation.

(2) A city, county, or city and county finds that by increasing the maximum length of stay to a specified additional period of time for the applicant, the problems raised by the applicant for an exemption are satisfied.

(c) As an alternative to granting a partial exemption pursuant to subdivision (a), in approving a request for an exemption from special occupancy park time limitations, a city, county, or city and county may:

(1) Impose conditions to assure there will be no adverse impact on local school districts due to the additional enrollment of residents of a special occupancy park.

(2) Assure that a special occupancy park is in compliance with all regulations adopted pursuant to this part.

(d) If an exemption to a time limitation for occupancy of spaces in a special occupancy park is applied for pursuant to subdivision (a) and the special occupancy park for which the exemption is requested is located within the coastal zone, as defined in Section 30103 of the Public Resources Code, the exemption shall be granted, only, if in addition to meeting the requirements set forth in subdivision (a), the city, county, or city and county finds that granting the exemption is consistent with its certified local coastal program. If granting the exemption would be inconsistent with an approved or certified local coastal program, the applicant for the exemption may petition the appropriate city, county, or city and county to seek an amendment to its certified local coastal program. If, after consultation with the California Coastal Commission, it is determined that an amendment to the certified local coastal program is required in order to grant the exemption, the city, county, or city and county may request an amendment to the certified local coastal program within 90 days of the applicant's filing of the petition. This request may be made without regard to the limitation on the number of the amendments that can be requested during any year, pursuant to Section 30514 of the Public Resources Code. The California Coastal Commission shall certify the amendment to the local coastal program unless it finds that the certification would not be consistent with Chapter 3 (commencing with Section 30200) of Division 20 of the Public Resources Code.

18865.3. The department shall adopt regulations for special occupancy parks which shall take into consideration any special conditions as location, physical environment, density of usage, type of operation, type of vehicles to be accommodated, and duration of occupancy. These regulations shall establish requirements that are

determined by the department to be reasonable and necessary for the protection of life and property.

18865.4. This part does not apply to any park or camping area owned, operated, and maintained by any of the following:

(a) The federal government.

(b) The state.

(c) Any agency or political subdivision of the state.

(d) Any city, county, or city and county.

18865.5. (a) This part does not apply to any apartment house, hotel, or dwelling that is subject to Part 1.5 (commencing with Section 17910).

(b) This part does not apply to electric, gas, or water facilities owned, operated, and maintained by a public utility.

18865.6. (a) This part is not intended to prevent the use of any material, appliance, installation, device, arrangement, or method of construction not specifically prescribed by this part and the rules and regulations adopted pursuant to this part, if the alternate use has been approved.

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

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

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

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

18865.7. (a) The department shall evaluate the enforcement of this part and regulations adopted pursuant to this part by each city, county, or city and county that has assumed responsibility for enforcement.

(b) In performing this evaluation, the department shall have the following authority:

(1) To examine the records of local enforcement agencies and to secure from them reports and copies of their records at any time. However, if the department requires duplication of these records, it shall pay for the costs of duplication.

(2) To carry out any investigations it deems necessary to ensure enforcement of this part and the regulations adopted pursuant thereto.

18865.8. (a) The department may delegate all or any portion of the authority to enforce this part and the regulations adopted pursuant to this part, or to enforce specific sections of this part or those regulations, to a local building department or health department of any city, county, or city and county where the department is the enforcement agency, if all of the following conditions exist:

(1) The delegation of authority is necessary to provide prompt and effective recovery assistance or services during or immediately following a disaster declared by the Governor.

(2) The local building department or health department requests the authority and that request is approved by the governing body having jurisdiction over the local building department or health department.

(3) The department has determined that the local building department or health department possesses the knowledge and expertise necessary to administer the delegated responsibilities.

(b) The delegation of authority shall be limited to the time established by the department as necessary to adequately respond to the disaster, or the time period determined by the department, but in no case shall the period exceed 60 days. The delegation of authority may be limited to specific geographic areas or specific mobilehome parks or recreational vehicle parks at the sole discretion of the department.

(c) Local building departments and health departments acting pursuant to subdivision (a) may charge fees for services rendered, not to exceed the department's approved schedule of fees associated with the services provided. The department may also reimburse these local departments if funds are received for the activities undertaken pursuant to subdivision (a), but no obligation for reimbursement by the department shall accrue unless funds are allocated to the department for this purpose.

CHAPTER 5. ENFORCEMENT, ACTIONS, AND PROCEEDINGS

18866. (a) The department shall enforce this part and the rules and regulations adopted pursuant to this part, except as provided in Section 18865.

(b) The officers or agents of the enforcement agency may do either of the following:

(1) Enter public or private property to determine whether there exists any park to which this part applies.

(2) Enter and inspect all parks, wherever situated, and inspect all accommodations, equipment, or paraphernalia used in connection therewith, including the right to examine any registers of occupants

maintained therein in order to secure the enforcement of this part and the regulations adopted pursuant to this part.

18866.1. Enforcement agencies responsible for the enforcement of this part and the regulations adopted pursuant to this part shall maintain all records on file of special occupancy park inspections.

18866.2. Any notice of violation of this part, or any rule or regulation adopted pursuant thereto, issued by the enforcement agency shall be issued to the appropriate persons designated in Section 18867 and shall include a statement that any willful violation is a misdemeanor under Section 18870.

18866.3. The owner or operator of a park shall abate any nuisance in the park within five days, or within such longer period of time as may be allowed by the enforcement agency, after he or she has been given written notice to remove the nuisance. If he or she fails to do so within that time, the district attorney of the county in which the park, or the greater portion of the park, is situated shall bring a civil action to abate the nuisance in the superior court of the county in the name of the people of the State of California.

18866.4. In any action or proceeding to abate a nuisance in a park, proof of any one of the following facts is sufficient for a judgment or order for the abatement of the nuisance, violation, or operation of the park:

(a) A previous conviction of the owner or operator of a violation of this part or Part 2.1 (commencing with Section 18200) or a regulation adopted pursuant to this part or Part 2.1 (commencing with Section 18200) that constitutes a nuisance or failure on the part of the owner or operator to correct the violation after the conviction.

(b) The violation is the basis for the proceeding.

18866.5. (a) If any park or portion thereof governed by this part is constructed, altered, converted, used, occupied, or maintained in violation of this part, the regulations adopted pursuant to this part, or any order or notice issued by the enforcement agency that allows a reasonable time to correct the violation, the enforcement agency may institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation.

(b) The superior court may make any order for which application is made pursuant to this part.

18866.6. (a) No enforcement agency shall approve any park fronting upon any coastline, shoreline, river, or waterway or upon any lake or reservoir owned in whole or part by any public agency, including the state, unless the city, county, or city and county having jurisdiction over the property has determined that reasonable public access by fee or easement from public highways exists to the coastline, shoreline, river, waterway, lake or reservoir.

(b) Any public access route or routes required to be provided by the owner shall be expressly designated on a map filed with the county recorder of the county in which the park lies, and the map shall specify the name of the owner of, and particularly describe the property involved, and designate the governmental entity to which the route or routes are dedicated. A governmental entity shall accept the dedication within three years after the recordation or the dedication shall be deemed abandoned.

(c) Any public access required pursuant to this section need not be provided through or across the park if the city, county, or city and county having jurisdiction has made a finding that reasonable public access is otherwise available within a reasonable distance from the park. Any such findings shall be set forth on the recorded map required by this section.

(d) Nothing in this section shall be construed as requiring a park owner to improve any access route or routes that are primarily for the benefit of nontenants, nonoccupants, or nonresidents of the park.

CHAPTER 6. NOTICE OF VIOLATIONS

18867. (a) (1) If, upon inspection, the enforcement agency determines that a special occupancy park is in violation of any provision of this part, or any rule or regulation adopted pursuant thereto, the enforcement agency shall promptly, but not later than 10 days, excluding Saturday, Sunday, and holidays, after the enforcement agency completes the inspection and determines that the alleged violation exists, issue a notice to correct the violation to the owner or operator of the special occupancy park and to the responsible person, as defined in Section 18871.8.

(2) In the event of a violation that constitutes an imminent threat to health and safety, the notice of violation shall be issued immediately and served on the owner or operator of the special occupancy park and to the responsible person, as defined in Section 18871.8.

(3) The owner or operator of the park shall be responsible for the correction of any violations for which a notice of violation has been given pursuant to this subdivision.

(b) (1) If, upon inspection, the enforcement agency determines that a recreational vehicle, an accessory building or structure, or lot is in violation of any provision of Chapter 7 (commencing with Section 18870), Chapter 8 (commencing with Section 18871), Chapter 9 (commencing with Section 18872), or any regulation adopted pursuant thereto, the enforcement agency shall promptly, but not later than 10 days, excluding Saturday, Sunday, and holidays, after the enforcement agency completes the inspection and determines that the alleged violation exists, issue a notice to correct the violation to the registered

owner of the recreational vehicle, with a copy to the occupant thereof, if different from the registered owner.

(2) If a violation is discovered that constitutes an imminent hazard representing an immediate risk to life, health, and safety and requiring immediate correction, the notice of violation shall be issued immediately and served upon the occupant, with a copy mailed to the registered owner of the recreational vehicle, if different from the occupant, to the owner or operator of the special occupancy park, and to the responsible person, as defined in Section 18871.8.

(3) The registered owner or the occupant of the recreational vehicle shall be responsible for the correction of any violations for which a notice of violation has been given pursuant to this subdivision.

(4) The enforcement agency may issue a notice of violation in accordance with this chapter to the owner and occupant of a recreational vehicle, mobilehome, manufactured home, park trailer, or of factory-built housing which occupies a lot within a special occupancy park.

(c) (1) Service of the notice of violation shall be effected either personally or by first-class mail. Each notice of violation shall be in writing and shall describe with particularity the nature of the violation in as clear language as the technicality of the violation will allow the average layperson to understand what is being cited, including a reference to the statutory provisions or regulation alleged to have been violated, as well as any penalty provided by law for failure to make timely correction.

(2) For violations other than imminent threats to health and safety as provided in paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b), the notice of violation shall allow 90 days from the postmarked date of the notice or date of personal delivery for the elimination of the condition constituting the alleged violation.

(3) If, after the reinspection of a violation described in paragraph (2) of this subdivision, the enforcement agency determines that there is a valid reason why a violation has not been corrected, including, but not limited to, weather conditions, illness, availability of repair persons, or availability of financial resources, the enforcement agency may extend the time for correction, at its discretion, for a reasonable period of time after the 90-day period.

(4) Upon a reinspection after the 90-day period of a violation described in paragraph (2) of this subdivision, if a second notice to correct a violation that is the responsibility of the registered owner of the manufactured home or mobilehome or owner of the recreational vehicle pursuant to paragraph (1) of subdivision (b) is issued to the registered owner of a manufactured home or mobilehome or recreational vehicle, with a copy to the occupant thereof, if different from the registered

owner, a copy of the notice shall also be provided to the owner or operator of the special occupancy park, and to the responsible person as defined in Section 18871.3.

(5) If a second notice to correct a park violation pursuant to paragraph (1) of subdivision (a) is issued to the owner or operator of the park and to the responsible person, as defined in Section 18871.3, the enforcement agency shall post a copy of the violation in a conspicuous place in the park common area, and the posted notice shall only be removed by the enforcement agency when the violation is corrected.

(6) All violations described in paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) shall be corrected within a reasonable time as determined by the enforcement agency. Notices of those violations shall state the time determined by the enforcement agency within which corrections must be made.

(d) Notwithstanding any other provision of law, the enforcement agency may, at its sole discretion, determine not to issue a notice of violation pursuant to this chapter if the condition which violates this part or the regulations adopted pursuant thereto does not constitute an imminent hazard representing an immediate risk to life, health, and safety and requiring immediate correction. If the enforcement agency determines, pursuant to this subdivision, not to issue a notice of violation, the enforcement agency shall include in its inspection report a description of the condition that violates this part and its determination not to issue a notice of violation.

18868. If the owner or operator of the special occupancy park or the registered owner or occupant of the mobilehome, manufactured home, or recreational vehicle disputes a determination by the enforcement agency regarding the alleged violation, the alleged failure to correct the violation in the required timeframe, or the reasonableness of the deadline for correction specified by the notice of violation, the owner or operator of the special occupancy park or the registered owner or occupant of the mobilehome, manufactured home, or recreational vehicle may request an informal conference with the enforcement agency. The informal conference, and any subsequent hearings or appeals of the decision of the enforcement agency, shall be conducted in accordance with procedures prescribed by the department.

18869. The remedies provided by this chapter are cumulative, and shall not be construed to supersede other provisions of law providing sanctions for violators of this part, including, but not limited to, Sections 18870.11 and 18874. Nothing in this chapter shall be construed to restrict any remedy, provisional or otherwise, provided by law for the benefit of any party, and no judgment under this chapter shall preclude any party from obtaining additional relief based upon the same facts.

CHAPTER 7. PERMITS AND FEES

18870. It is unlawful for any person to do any of the following unless he or she has a valid permit issued by the enforcement agency:

(a) Construct a park.

(b) Construct additional buildings or lots, or alter buildings, lots, or other installations, in an existing park.

(c) Operate, occupy, rent, lease, sublease, let out, or hire out for occupancy any lot in a park that has been constructed, reconstructed, or altered without having obtained a permit as required herein.

(d) Operate a park or any portion thereof.

This section shall not apply to any employee housing having a valid annual permit to operate.

18870.1. Applications for a permit to construct or reconstruct shall be accompanied by:

(a) A description of the grounds.

(b) Plans and specifications of the proposed construction.

(c) A description of the water supply, ground drainage and method of sewage disposal.

(d) Appropriate fees.

(e) Evidence of compliance with all valid local planning, health, utility and fire requirements.

18870.2. Fees as applicable shall be submitted for permits:

(a) Fees for a permit to conduct any construction subject to this part as determined by the schedule of fees adopted by the department.

(b) Plan checking fees equal to one-half of the construction, plumbing, mechanical, and electrical permit fees, except that the minimum fee shall be ten dollars ($10).

(c) Except for a temporary recreational vehicle park, an annual operating permit fee of twenty-five dollars ($25) and an additional two dollars ($2) per lot or two dollars ($2) per camping party for the maximum number of camping parties to be accommodated at any one time in an incidental camping area.

(d) Temporary recreational vehicle park operating permit fee of twenty-five dollars ($25), with no additional fee for the lots.

(e) Change in name fee or transfer of ownership or possession fee of ten dollars ($10).

(f) Duplicate permit fee or amended permit fee of ten dollars ($10).

18870.3. (a) Funds collected by the department pursuant to this part shall be deposited into the Mobilehome Parks and Special Occupancy Parks Revolving Fund established pursuant to Section 18502.5. Moneys deposited in the fund shall be available, upon appropriation, to the department for expenditure in carrying out the provisions of this part and Part 2.1 (commencing with Section 18200). The department shall, by

January 1, 2003, establish procedures that permit the identification of revenues received by the fund and expenditures paid out of the fund as they relate to mobilehome parks and special occupancy parks.

(b) Notwithstanding any maximum fees set by this part, the department may set, by regulation, fees charged by the department for all permits and for the department's activities required by this part. The fees shall be set with the primary objective that the aggregate revenue deposited in the Mobilehome Parks and Special Occupancy Parks Revolving Fund by or on behalf of special occupancy parks shall not, on an annual basis, exceed the costs of the department's activities mandated by this part.

(c) No proposed increase in fees may be effective any sooner than 45 days after written notification thereof is provided to the Chairperson of the Joint Legislative Audit Committee and the State Auditor. Upon receipt of the notification, the State Auditor may prepare a report to the Legislature that indicates whether the proposed increase is appropriate and consistent with this part.

(d) The total money contained in the Mobilehome Parks and Special Occupancy Parks Revolving Fund on June 30 of each fiscal year shall not exceed the amount of money needed for the department's operating expenses for one year for the enforcement of this part and Part 2.1 (commencing with Section 18200). If the total money contained in the fund exceeds this amount, the department shall make appropriate reductions in the schedule of fees authorized by this section, Section 18502.5, or both.

18870.4. (a) Except as otherwise provided in subdivision (b), the department by administrative rule and regulation shall establish a schedule of fees relating to all construction, mechanical, electrical, plumbing, and installation permits. The fees shall apply to and be paid to the enforcement agency. Fees established for construction, mechanical, electrical, and plumbing permits shall be reasonably consistent with the current edition of the Uniform Building Code as published by the International Conference of Building Officials, the Uniform Plumbing Code as published by the International Association of Plumbing and Mechanical Officials, and the National Electrical Code as published by the National Fire Protection Association.

(b) Fees for construction, mechanical, electrical, plumbing, and installation permits in temporary recreational vehicle parks shall be determined by the enforcement agency for each project, based on the cost of administration and enforcement, including the cost of determining the amount of fees to be charged.

18870.5. Any person responsible for obtaining any of the permits required by this chapter, Chapter 8 (commencing with Section 18871), or the regulations adopted pursuant to either of these chapters, who fails

to obtain those permits, shall pay double the fees prescribed in this chapter, Chapter 8 (commencing with Section 18871), or the regulations adopted pursuant to either of these chapters, as applicable.

18870.6. A permit to operate shall be issued by the department following notification by the local enforcement agency of completion of construction of a new park or additional lots to an existing park. The local enforcement agency shall, by approving the application for a permit to operate, authorize occupancy of the newly constructed facilities. Upon approval by the local enforcement agency, one copy of the permit application shall be provided to the applicant and one copy shall be forwarded to the department.

18870.7. Permits to operate shall be issued by the enforcement agency. A copy of each permit to operate shall be forwarded to the department. No permit to operate shall be issued for a park when the previous operating permit has been suspended by the enforcement agency until the violations that were the basis for the suspension have been corrected. No park that was in existence on September 15, 1961, shall be denied a permit to operate if the park complied with the law that this part directly or indirectly supersedes. Permits to operate shall be issued for a 12-month period and invoiced according to a method and schedule established by the department. Permit applications returned to the enforcement agency 30 days after the due date shall be subject to a penalty fee equal to 10 percent of the established fee. The penalty fee for submitting a permit application 60 or more days after the due date shall equal 100 percent of the established permit fee. These penalties and the established permit fees shall be paid prior to issuance of the permit, and the fee and 100 percent penalty shall be due upon demand of the enforcement agency for any park that has not applied for a permit.

18870.8. (a) The enforcement agency shall be notified by the new owner or operator of any park of any change in the name or ownership or possession thereof. The notice shall be in written form and shall be furnished within 30 days from and after any such change in name or transfer of ownership or possession. The notice shall be accompanied by the appropriate fees to the enforcement agency. Following receipt of the notice and fee, the enforcement agency shall record the change of ownership or possession and shall issue an amended permit to operate, except as provided in Section 18870.7.

(b) In case of any change in name or transfer of ownership or possession prior to completion of construction, no additional fee for a construction permit is required, provided that the new owner completes construction in accordance with prior enforcement agency approved plans and specifications. However, if there is any substantial deviation from the approved plans and specifications, a new application for a

permit to construct shall be submitted, accompanied by revised plans and specifications and the appropriate fees.

18870.9. Permits for construction and operation shall be posted in a conspicuous place.

18870.10. All permits as required by this chapter for construction or reconstruction shall automatically expire within six months from the date of issuance thereof in those cases where the construction or reconstruction has not been completed within that period. However, the enforcement agency may extend the expiration date of the permit for a reasonable time.

18870.11. If any person who holds a permit to operate violates the permit or this part, the permit may be suspended by the enforcement agency. This section does not, however, authorize the suspension of a permit of any park existing on September 15, 1961, for any violation of this part directly or indirectly that was not a violation of the law that this part supersedes.

18870.12. The enforcement agency shall issue and serve upon the permittee a notice setting forth in what respect the provisions of the permit or this code have been violated, and shall notify him or her that unless these provisions have been complied with within 30 days after the date of notice, the permit shall be subject to suspension.

18870.13. The notice shall be served by posting at least one copy in a conspicuous place on the premises described in the permit, and by sending another copy by registered mail, postage prepaid, return receipt requested, to the person to whom the permit was issued at the address therein given.

18870.14. Any permittee receiving a notice issued pursuant to Section 18870.12 may request and shall be granted a hearing on the matter before an authorized representative of the enforcement agency. The permittee shall file with the enforcement agency a written petition requesting the hearing and setting forth a brief statement of the grounds therefor within 10 days of the date of mailing of the notice.

18870.15. Upon receipt of the petition, the enforcement agency shall set a time and place for the hearing and shall give the petitioner written notice thereof. At the hearing the petitioner shall be given an opportunity to be heard and to show cause, if any, why the notice should be modified or withdrawn.

18870.16. The hearing shall be commenced not later than 10 days after the day on which such petition was filed. Upon application of the petitioner the enforcement agency may, however, postpone the date of the hearing for a reasonable time beyond the 10-day period, if in its judgment the petitioner has submitted a good and sufficient reason for the postponement.

18870.17. After the hearing the enforcement agency shall sustain, modify, or withdraw the notice, depending upon its findings as to whether the provisions of this part have been complied with.

18870.18. If the requirements of the notice have not been complied with on or before the expiration of 30 days after the mailing and posting of the notice, the enforcement agency may suspend the permit.

18870.19. Upon compliance by the permittee with the provisions of this part and of the notice, and submission of proof thereof to the enforcement agency, the enforcement agency shall reinstate the permit or issue a new permit.

CHAPTER 8. REGULATIONS—GENERAL PROVISIONS

18871. It is unlawful for any person to use or cause, or permit to be used for occupancy, any of the following manufactured homes, mobilehomes, park trailers, or recreational vehicles in a park or recreational vehicles outside of special occupancy parks:

(a) Any recreational vehicle, park trailer, mobilehome, or manufactured home supplied with fuel, gas, water, electricity, or sewage connections, unless the connections and installations conform to regulations of the department.

(b) Any recreational vehicle, mobilehome, or manufactured home that is permanently attached with underpinning or foundation to the ground, except for a mobilehome or manufactured home bearing a department insignia or federal label that is installed in accordance with Part 2.1 (commencing with Section 18200), and any recreational vehicle, mobilehome, manufactured home, or park trailer that is not in compliance with Sections 18027.3 and 18871.5.

(c) Any recreational vehicle, mobilehome, or manufactured home in an unsafe or unsanitary condition or that is structurally unsound and does not protect its occupants against the elements.

(d) Any mobilehome or manufactured home that does not conform to the registration requirements of the department.

18871.2. If a manufactured home, mobilehome, or commercial coach is to be installed on a foundation system and located in a park, the installation shall comply with Section 18551. Should the manufactured home, mobilehome, or commercial coach be subsequently removed from the foundation system, the removal shall comply with Section 18551.

18871.3. The department shall propose the adoption of and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5, and the department shall adopt other regulations for accessory buildings or structures located in a park. The regulations shall provide for the construction, location, and use of

accessory buildings or structures located in a special occupancy park to protect the health and safety of the occupants and the public, and shall be enforced by the appropriate enforcement agency.

18871.4. It is unlawful to permit any wastewater or material from any plumbing fixtures in a manufactured home, mobilehome, or recreational vehicle to be deposited upon the surface of the ground. Except as provided in Section 18930, the department may adopt, amend, or repeal any rules and regulations that it determines are reasonably necessary for the protection of life and property and to carry out the purposes of this section.

18871.5. (a) No recreational vehicle within a park shall be rented or leased unless it bears a label, an insignia, or an insignia of approval required by Section 18027.3.

(b) A recreational vehicle that does not bear a label, an insignia, or an insignia of approval, as required by subdivision (f) or (g) of Section 18027.3, may not occupy any lot in a park unless the vehicle owner provides reasonable proof of compliance with ANSI Standard No. A119.2 or A119.5 depending upon whether it is a recreational vehicle or park trailer. A department label or insignia shall constitute one form of reasonable proof of compliance with ANSI standards. This subdivision does not apply to a recreational vehicle occupying a lot in a special occupancy park on December 31, 1998, unless the vehicle is moved to a different park on or after January 1, 1999.

18871.6. The department shall adopt regulations to ensure adequate animal control within parks.

18871.7. In every park there shall be installed and kept burning from sunset to sunrise sufficient artificial light to adequately illuminate every building containing toilets and showers, and roadways and walkways within the park.

18871.8. In every park, there shall be a person available to receive by telephonic or like means, including telephones, cellular telephones, telephone answering machines, answering services or pagers, or in person who shall be responsible for, and who shall reasonably respond in a timely manner to emergencies concerning the operation and maintenance of the park. In every park with 50 or more units, that person or his or her designee shall reside in the park and shall have knowledge of emergency procedures relative to utility systems and common facilities under the ownership and control of the owner of the park.

18871.9. Every person who owns or operates an incidental camping area with an attendant on the premises shall keep a register in which shall be entered all of the following:

(a) The name and address of the owner or occupant of each recreational vehicle or each person in a camping party.

(b) The make, type and license number of the recreational vehicle and the state in which the recreational vehicle is registered and the year of registration as shown on the license plates attached to it when a recreational vehicle is to be located on a lot.

(c) Dates of occupancy, not to exceed 30 days annually.

18871.10. The department shall adopt regulations to govern the use and occupancy of manufactured homes, mobilehomes, and recreational vehicles located in special occupancy parks. Those regulations shall establish minimum requirements to protect the health and safety of the tenants, occupants, and residents and the public, and shall also provide for the repair or abatement of any unsafe or unsanitary condition of a manufactured home, mobilehome, park trailer, or recreational vehicle or the electrical, mechanical, or plumbing installations therein.

18871.11. (a) A camping cabin shall be designed to resist the following live loads: (1) floor live loads not less than 40 pounds per square foot of floor area; (2) horizontal live loads not less than 15 pounds per square foot of vertical wall and roof area; and (3) roof live loads not less than 20 pounds per square foot of horizontal roof area. In areas where snow loads are greater than 20 pounds per square foot, the roof shall be designed and constructed to resist these additional loads.

(b) Each sleeping room in a camping cabin shall have a second exit to the outside of the camping cabin, except that a window exit may be permitted as an alternative if the opening is not less than 20 inches wide and 24 inches high and the bottom of the window is located not more than 44 inches above the floor.

(c) Each sleeping room in a camping cabin shall be provided with an approved smoke detector. If the camping cabin contains an electrical system, the smoke detector shall be energized from that electrical system with a battery backup. If there is no electrical system in the camping cabin, a battery-operated smoke detector is permitted.

(d) All wall and ceiling surfaces in a camping cabin shall have a flame spread rating of not more than 200.

(e) Fuel-burning heating or cooking appliances shall not be operated within a camping cabin.

(f) Access for disabled persons to camping cabins shall be provided in conformance with applicable state and federal laws.

CHAPTER 9. LOTS

18872. Except as provided in Section 18930, the department shall adopt regulations to govern the construction, use, occupancy, and maintenance of parks and lots within the parks. The regulations adopted by the department shall establish standards and requirements that protect the health, safety, and general welfare of the occupants and residents of

parks. The regulations adopted by the department shall provide equivalent or greater protection to the residents of parks than the statutes and regulations in effect on December 31, 1977.

18872.1. (a) Park lot lines may not be created, moved, shifted, or altered without the written authorization of the local planning agency and the occupant or occupants, resident, or tenant, if any, of the lot or lots on which the lot line will be created, moved, shifted, or altered.

(b) No park lot line shall be created, moved, shifted, or altered, if the action will place an occupant of a lot in violation of any separation or space requirements under this part or under any administrative regulation.

18872.2. Except as provided in Section 18930, the department shall adopt regulations to govern lot access and driveways within parks. The regulations shall establish standards or requirements that protect the health, safety, and general welfare of the occupants and residents of parks and shall require proper maintenance of lot access and driveways. The regulations shall provide equivalent or greater protection to the occupants and residents of parks than the statutes and regulations in effect on December 31, 1977.

CHAPTER 10. BUILDING CONSTRUCTION, PLUMBING, ELECTRICAL, FUEL GASES, AND FIRE PROTECTION

18873. The department shall adopt regulations regarding the construction of buildings in parks that it determines are reasonably necessary for the protection of life and property and to carry out the purposes of this part. The department shall propose and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for the purposes described in this section. The building standards published in the California Building Standards Code and the other regulations adopted by the department shall apply to the construction of all permanent buildings in a park, except in a park in a city, county, or city and county that has adopted and is enforcing a building code with amendments adopted pursuant to Section 17958.5 and which city, county, or city and county is the enforcement agency.

18873.1. The department shall adopt the regulations regarding plumbing in parks that it determines are reasonably necessary for the protection of life and property and to carry out the purposes of this part. The department shall propose and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for the purposes described in this section. The building standards published in the California Building Standards Code and the other regulations adopted by the department shall apply to all plumbing within permanent buildings, except a park in a city, county, or city and

county that has adopted and is enforcing a plumbing code with amendments adopted pursuant to Section 17958.5 and which city, county, or city and county is the enforcement agency.

18873.2. The department shall adopt regulations for toilet, shower, and laundry facilities in parks. The department shall propose and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for the purposes described in this section. The building standards published in the California Building Standards Code and the other regulations adopted by the department shall establish standards and requirements that protect the health, safety, and general welfare of the tenants, occupants, and residents of parks, and shall require proper maintenance of those facilities. The building standards published in the California Building Standards Code and the other regulations adopted by the department shall provide equivalent or greater protection to the residents of parks than the statutes and regulations in effect on December 31, 1977.

18873.3. The department shall adopt regulations regarding electrical wiring, fixtures, and equipment installed in parks that it determines are reasonably necessary for the protection of life and property and to carry out the purposes of this part. The department shall propose and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for the purposes described in this section. The building standards published in the California Building Standards Code and the other regulations adopted by the department shall apply to all electrical wiring, fixtures, and equipment installed within permanent buildings, except within a park in a city, county, or city and county that has adopted and is enforcing an electrical code with amendments adopted pursuant to Section 17958.5 and which city, county, or city and county is the enforcement agency.

18873.4. The department shall adopt regulations regarding fuel gas equipment and installations in parks that it determines are reasonably necessary for the protection of life and property and to carry out the purposes of this part. The department shall propose and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for the purposes described in this section. The building standards published in the California Building Standards Code and the other regulations adopted by the department shall apply to all fuel gas equipment and installations within permanent buildings, except within a park in a city, county, or city and county that has adopted and is enforcing a gas code with amendments adopted pursuant to Section 17958.5 and which city, county, or city and county is the enforcement agency.

18873.5. (a) The department shall adopt regulations that it determines are reasonably consistent with generally recognized fire

protection standards, governing conditions relating to the prevention of fire or for the protection of life and property against fire in parks. The department shall propose and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for the purposes described in this section within permanent buildings. The department, in consultation with local firefighting agencies, shall adopt and implement regulations that require regular maintenance and periodic inspection and testing of fire hydrants in parks.

(b) The regulations adopted by the department shall apply in all parks, except in a park within a city, county, or city and county that is the enforcement agency and has adopted and is enforcing a fire prevention code imposing restrictions equal to or greater than the restrictions imposed by those building standards published in the California Building Standards Code and the other regulations adopted by the department.

(c) Notwithstanding this section, the regulations adopted by the department relating to the installation of water supply and fire hydrant systems shall not apply within parks constructed, or approved for construction, prior to January 1, 1966.

(d) Notwithstanding the provisions of this section, a city, county, city and county, or special district that is not the enforcement agency under this part may enforce its fire prevention code in parks relating to fire hydrant systems, water supply, fire equipment access, posting of fire equipment access, parking, lot identification, weed abatement, debris abatement, combustible storage abatement, and burglar bars. Before assuming fire code enforcement in accordance with this subdivision, a city, county, city and county, or special district shall give the department a 30-day written notice. A city, county, city and county, or special district that enforces its fire prevention code pursuant to this subdivision shall apply its code provisions to conditions that arise on or after adoption of its fire prevention code, or to conditions that, in the opinion of the fire chief, constitute a distinct hazard to life or property.

CHAPTER 11. PENALTIES

18874. (a) Any person who willfully violates this part, building standards published in the California Building Standards Code relating thereto, or any other regulations adopted by the department pursuant to this part is guilty of a misdemeanor and shall be punished by a fine not exceeding four hundred dollars ($400) or by imprisonment in the county jail not exceeding 30 days, or by both that fine and imprisonment.

(b) Any permitholder who willfully violates this part, building standards published in the California Building Standards Code relating thereto, or any other regulations adopted by the department pursuant to

this part shall be subject to suspension or revocation of his or her permit to operate.

(c) Any person who willfully violates this part, any building standard published in the California Building Standards Code relating thereto, or any other regulation adopted by the department pursuant to this part, shall be liable for a civil penalty of five hundred dollars ($500) for each violation or for each day of a continuing violation. The enforcement agency shall institute or maintain an action in the appropriate court to collect any civil penalty arising under this section.

SEC. 40. Section 5003.4 of the Public Resources Code is amended to read:

5003.4. There shall be provided in each state park in which camping is permitted those parking facilities for recreational vehicles, as defined by Section 18010 of the Health and Safety Code, that can be accommodated within the park consistent with the objective of providing camping facilities for the public in these parks. In addition, the Department of Parks and Recreation may install or permit the installation of camping cabins, as defined by Section 18862.5 of the Health and Safety Code, within the units of the state park system if installation of camping cabins is consistent with the general plan of the unit.

SEC. 41. (a) The Department of Housing and Community Development shall adopt any regulations it deems necessary for the implementation of this act by October 30, 2002. Any regulations adopted by the Department of Housing and Community Development in Title 25 (commencing with Section 1) of the California Code of Regulations to implement and interpret this act shall be deemed editorial changes pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of the Government Code), if they are substantially the same in content as the regulations currently in Chapter 2 (commencing with Section 1000) of Title 25 currently governing mobilehome parks and special occupancy parks.

(b) The Department of Housing and Community Development shall establish procedures that permit the identification of revenues received by the Mobilehome Parks and Special Occupancy Parks Revolving Fund and expenditures paid out of the fund as they relate to mobilehome parks and special occupancy parks.

SEC. 42. Section 29.5 of this bill incorporates amendments to Section 18610.5 of the Health and Safety Code proposed by this bill and SB 339. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 18610.5 of the Health and Safety Code, and (3) this bill is enacted after SB 339, in which case Section 18610.5 of the Health and Safety Code, as amended by SB 339, shall remain operative only until

January 1, 2003, at which time Section 29.5 of this bill shall become operative, and Section 29 of this bill shall not become operative.

SEC. 43. 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.

SEC. 44. This act shall become operative on January 1, 2003, except for Sections 41 and 42, which shall become operative on January 1, 2002.

CHAPTER 435

An act to amend Sections 2470, 2535.2, 2684, 2786, 2892.1, 2984, 3147, 3508, 3524, 4545, 4980.38, 4980.41, 4980.45, and 4982 of, to amend and repeal Section 2471 of, and to add Section 121.5 to, the Business and Professions Code, relating to healing arts, and making an appropriation therefor.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 121.5 is added to the Business and Professions Code, to read:

121.5. Except as otherwise provided in this code, the application of delinquency fees or accrued and unpaid renewal fees for the renewal of expired licenses or registrations shall not apply to licenses or registrations that have lawfully been designated as inactive or retired.

SEC. 2. Section 2470 of the Business and Professions Code is amended to read:

2470. The board may adopt, amend, or repeal, in accordance with the provisions of the Administrative Procedure Act, regulations necessary to enable the board to carry into effect the provisions of law relating to the practice of podiatric medicine.

SEC. 3. Section 2471 of the Business and Professions Code is amended to read:

2471. (a) Except as provided by Section 159.5, the board may employ, within the limits of the funds received by the board, all personnel necessary to carry out this chapter.

(b) The board may select and contract with necessary podiatric medical consultants who are licensed doctors of podiatric medicine to assist it in its enforcement program on an intermittent basis. No person may serve as a consultant for more than a total of 48 months unless there has been a break following his or her achievement of that period of service of at least 36 months. Notwithstanding any other provision of law, the board may contract with these consultants on a sole source basis.

(c) Notwithstanding the limitation on service under subdivision (a), the board may continue to contract with the consultant who was responsible for investigating or prosecuting a specific case if the case is continued past the term of the consultant's contract.

(d) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any consultant under contract with the board shall be considered a public employee.

(e) 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.

SEC. 4. Section 2535.2 of the Business and Professions Code is amended to read:

2535.2. Except as provided in Section 2535.3, a license that has expired may be renewed at any time within five years after its expiration upon filing of an application for renewal on a form prescribed by the board and payment of all accrued and unpaid renewal fees. If the license is not renewed on or before its expiration, the licensee, as a condition precedent to renewal, shall also pay the prescribed delinquency fee. Renewal under this section shall be effective on the date on which the application is filed, on the date on which all renewal fees are paid, or on the date on which the delinquency fee is paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date provided in Section 2535, after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

SEC. 5. Section 2684 of the Business and Professions Code is amended to read:

2684. (a) Notwithstanding Section 2422, any license or approval for the practice of physical therapy shall expire at 12 midnight on the last day of the birth month of the licensee or holder of the approval during the second year of a two-year term, if not renewed.

(b) To renew an unexpired license or approval, the licensee or the holder of the approval shall, on or before the dates on which it would

otherwise expire, apply for renewal on a form prescribed by the board and pay the prescribed renewal fee.

(c) A license that has expired may be renewed within five years upon payment of all accrued and unpaid renewal fees.

SEC. 6. Section 2786 of the Business and Professions Code is amended to read:

2786. (a) An approved school of nursing is one which has been approved by the board, gives the course of instruction approved by the board, covering not less than two academic years, is affiliated or conducted in connection with one or more hospitals, and is an institution of higher education or is affiliated with an institution of higher education. For purposes of this section, ''institution of higher education'' includes community colleges offering an associate degree. An approved school of nursing which is not an institution of higher education shall make an agreement with an institution of higher education in the same general location to grant an associate of arts degree to individuals who graduate from the school of nursing or to grant a baccalaureate degree in nursing with successful completion of an additional course of study as approved by the board and the institution involved.

(b) The board shall determine by regulation the required subjects of instruction to be completed in an approved school of nursing for licensure as a registered nurse and shall include the minimum units of theory and clinical experience necessary to achieve essential clinical competency at the entry level of the registered nurse. The board's standards shall be designed to encourage all schools to provide clinical instruction in all phases of the educational process.

(c) The board shall perform or cause to be performed an analysis of the practice of the registered nurse no less than every five years. Results of the analysis shall be utilized to assist in the determination of the required subjects of instruction, validation of the licensing examination, and assessment of the current practice of nursing.

SEC. 7. Section 2892.1 of the Business and Professions Code is amended to read:

2892.1. Except as provided in Sections 2892.3 and 2892.5, an expired license may be renewed at any time within four years after its expiration upon filing of an application for renewal on a form prescribed by the board, payment of all accrued and unpaid renewal fees, and payment of any fees due pursuant to Section 2895.1.

If the license is renewed more than 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 all renewal fees are paid, or on the date on which the

delinquency fee is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 2892 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

SEC. 8. Section 2984 of the Business and Professions Code is amended to read:

2984. Except as provided in Section 2985, a license that has expired 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 board 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 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 all renewal fees are 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. 9. Section 3147 of the Business and Professions Code is amended to read:

3147. Except as otherwise provided by Section 114 of this code, an expired certificate 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 board, and payment of all accrued and unpaid renewal fees. If the certificate is renewed more than 30 days after its expiration, the certificate holder 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 accrued renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the certificate shall continue in effect through the date provided in Section 3146 which next occurs after the effective date of the renewal, when it shall expire if it is not renewed.

A certificate which, under the law in effect before October 1, 1961, became suspended because of the failure of its holder to renew it, shall, for the purposes of this article, be considered to have expired on the date that it became suspended.

SEC. 10. Section 3508 of the Business and Professions Code is amended to read:

3508. (a) The committee may convene from time to time as deemed necessary by the committee.

(b) Notice of each meeting of the committee shall be given at least two weeks in advance to those persons and organizations who express an interest in receiving such notification.

(c) The committee shall receive permission of the director to meet more than six times annually. The director shall approve such meetings that are necessary for the committee to fulfill its legal responsibilities.

SEC. 11. Section 3524 of the Business and Professions Code is amended to read:

3524. A license or approval that has expired may be renewed at any time within five years after its expiration by filing an application for renewal on a form prescribed by the committee or board, as the case may be, and payment of all accrued and unpaid renewal fees. If the license or approval is not renewed within 30 days after its expiration, the licensed physician assistant and approved supervising physician, 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 all 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 Section 3522 or 3523 which next occurs after the effective date of the renewal, when it shall expire, if it is not again renewed.

SEC. 12. Section 4545 of the Business and Professions Code is amended to read:

4545. Except as provided in Section 4545.2, a license that has expired may be renewed at any time within four years after its expiration on filing an application for renewal on a form prescribed by the board, payment of all accrued and unpaid renewal fees, and payment of all fees required by this chapter. If the license is renewed more than 30 days after its expiration, the holder, 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 4544 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

A certificate which was forfeited for failure to renew under the law in effect before October 1, 1961, shall, for the purposes of this article, be considered to have expired on the date that it became forfeited.

SEC. 13. Section 4980.38 of the Business and Professions Code is amended to read:

4980.38. (a) Each educational institution preparing applicants to qualify for licensure shall notify each of its students by means of its public documents or otherwise in writing that its degree program is designed to meet the requirements of Sections 4980.37 and 4980.40, and shall certify to the board that it has so notified its students.

(b) In addition to all the other requirements for licensure, each applicant shall submit to the board a certification by the chief academic officer, or his or her designee, of the applicant's educational institution that the applicant has fulfilled the requirements enumerated in Sections 4980.37 and 4980.40, and subdivisions (d) and (e) of Section 4980.41.

(c) An applicant for an intern registration who has completed a program to update his or her degree in accordance with subdivision (k) of Section 4980.40 shall furnish to the board certification by the chief academic officer of a school, college, or university accredited by the Western Association of Schools and Colleges, or from a school, college, or university meeting accreditation standards comparable to those of the Western Association of Schools and Colleges, that the applicant has successfully completed all academic work necessary to comply with the current educational requirements for licensure as a marriage, family, and child counselor.

SEC. 14. Section 4980.41 of the Business and Professions Code is amended to read:

4980.41. All applicants for licensure shall complete the following coursework or training in order to be eligible to sit for the licensing examinations:

(a) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors, which shall include, but is not limited to, the following areas of study:

(1) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the profession's scope of practice.

(2) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of marriage, family, and child counseling, including family law.

(3) The current legal patterns and trends in the mental health profession.

(4) The psychotherapist/patient privilege, confidentiality, the patient dangerous to self or others, and the treatment of minors with and without parental consent.

(5) A recognition and exploration of the relationship between a practitioner's sense of self and human values and his or her professional behavior and ethics.

This course may be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.

(b) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(c) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder. When coursework in a master's or doctor's

degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.

(d) Except for persons who began graduate study prior to January 1, 1986, a master's or doctor's degree qualifying for licensure shall include specific instruction in alcoholism and other chemical substance dependency as specified by regulation. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.

(e) Except for persons who began graduate study prior to January 1, 1995, a master's or doctor's degree qualifying for licensure shall include coursework in spousal or partner abuse assessment, detection, and intervention. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. The requirement for coursework in spousal or partner abuse detection and treatment shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(f) Except for persons who began graduate study prior to January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychological testing. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.40.

(g) Except for persons who began graduate study prior to January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychopharmacology. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.40.

(h) The requirements added by subdivisions (f) and (g) are intended to improve the educational qualifications for licensure in order to better prepare future licentiates for practice, and are not intended in any way to expand or restrict the scope of licensure for marriage and family therapists.

SEC. 15. Section 4980.45 of the Business and Professions Code is amended to read:

4980.45. (a) A licensed professional in private practice who is a marriage, family, and child counselor, a psychologist, a clinical social worker, a licensed physician certified in psychiatry by the American

Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry and who is described in subdivision (f) of Section 4980.40 may supervise or employ, at any one time, no more than two unlicensed marriage, family, and child counselor registered interns in that private practice.

(b) A marriage, family, and child counseling corporation may employ, at any one time, no more than two registered interns for each employee or shareholder who is qualified to provide supervision pursuant to subdivision (f) of Section 4980.40. In no event shall any corporation employ, at any one time, more than 10 registered interns. In no event shall any supervisor supervise, at any one time, more than two registered interns. Persons who supervise interns shall be employed full time by the professional corporation and shall be actively engaged in performing professional services at and for the professional corporation. Employment and supervision within a marriage, family, and child counseling corporation shall be subject to all laws and regulations governing experience and supervision gained in a private practice setting.

SEC. 16. Section 4982 of the Business and Professions Code is amended to read:

4982. The board may refuse to issue any registration or license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

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

setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage, family, and child counseling services.

(d) Gross negligence or incompetence in the performance of marriage, family, and child counseling.

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

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

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

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

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

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

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual

misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage, family, and child counselor.

(*l*) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any registered trainee or registered intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

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

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

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

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

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

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

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a registered trainee or registered intern under one's supervision or control to perform, or permitting the registered trainee or registered intern to hold himself or herself out as competent to perform, professional services beyond the registered trainee's or registered intern's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

CHAPTER 436

An act to amend Sections 7000, 7001, 7002, 7003, 7005, 7007, 7010, 7010.5, 7010.7, 7012, 7013, 7014, 7016, 7021, 7054.6, 7104.1, 7109, 7116, 7200, 8100, 8300, 8571, and 8650 of, to amend the heading of Chapter 1 (commencing with Section 8100) of Part 1 of Division 8 of, to add Section 8650.5 to, and to repeal Sections 7017, 7054.5, 8113.2, 8301, 8302, 8303, 8304, 8305, 8306, 8307, and 8308 of, the Health and Safety Code, relating to cemeteries.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 7000 of the Health and Safety Code is amended to read:

7000. The definitions in this chapter apply to this division, Division 8 (commencing with Section 8100) and Division 102 (commencing with Section 102100) of this code, Chapter 12 (commencing with Section 7600) of Division 3 of the Business and Professions Code, and Chapter 19 (commencing with Section 9600) of Division 3 of the Business and Professions Code.

SEC. 2. Section 7001 of the Health and Safety Code is amended to read:

7001. ''Human remains'' or ''remains'' means the body of a deceased person, regardless of its stage of decomposition, and cremated remains.

SEC. 3. Section 7002 of the Health and Safety Code is amended to read:

7002. ''Cremated remains'' means the ashes and bone fragments of a human body that are left after cremation in a crematory, and includes ashes from the cremation container. ''Cremation remains'' does not include foreign materials, pacemakers, or prostheses.

SEC. 4. Section 7003 of the Health and Safety Code is amended to read:

7003. ''Cemetery'' means either of the following:

(a) Any of the following that is used or intended to be used and dedicated for cemetery purposes:

(1) A burial park, for earth interments.
(2) A mausoleum, for crypt or vault interments.
(3) A crematory and columbarium, for cinerary interments.
(b) A place where six or more human bodies are buried.

SEC. 5. Section 7005 of the Health and Safety Code is amended to read:

7005. Except in Part 5 (commencing with Section 9501) of Division 8, ''mausoleum'' means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

SEC. 6. Section 7007 of the Health and Safety Code is amended to read:

7007. Except in Part 5 (commencing with Section 9501) of Division 8, ''columbarium'' means a structure, room, or other space in a building or structure containing niches for inurnment of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

SEC. 7. Section 7010 of the Health and Safety Code is amended to read:

7010. ''Cremation'' means the process by which the following three steps are taken:

(a) The reduction of the body of a deceased human to its essential elements by incineration.

(b) The repositioning or moving of the body or remains during incineration to facilitate the process.

(c) The processing of the remains after removal from the cremation chamber pursuant to Section 7010.3.

SEC. 8. Section 7010.5 of the Health and Safety Code is amended to read:

7010.5. ''Residue'' means human ashes, bone fragments, prostheses, and disintegrated material from the chamber itself, imbedded in cracks and uneven spaces of a cremation chamber, that cannot be removed through reasonable manual contact with sweeping or scraping equipment. Material left in the cremation chamber, after the completion of a cremation, that can be reasonably removed shall not be considered ''residue.''

SEC. 9. Section 7010.7 of the Health and Safety Code is amended to read:

7010.7. ''Scattering'' means the authorized dispersal of cremated remains at sea, in other areas of the state, or commingling in a defined area within a dedicated cemetery, in accordance with this part.

SEC. 10. Section 7012 of the Health and Safety Code is amended to read:

7012. ''Entombment'' means the process of placing human remains in a crypt or vault.

SEC. 11. Section 7013 of the Health and Safety Code is amended to read:

7013. ''Burial'' means the process of placing human remains in a grave.

SEC. 12. Section 7014 of the Health and Safety Code is amended to read:

7014. ''Grave'' means a space of earth in a burial park, used, or intended to be used, for the disposition of human remains.

SEC. 13. Section 7016 of the Health and Safety Code is amended to read:

7016. ''Niche'' means a space in a columbarium used, or intended to be used, for the placement of cremated human remains.

SEC. 14. Section 7017 of the Health and Safety Code is repealed.

SEC. 15. Section 7021 of the Health and Safety Code is amended to read:

7021. ''Directors'' or ''governing body'' means the board of directors, board of trustees, or other policymaking body of a cemetery association.

SEC. 16. Section 7054.5 of the Health and Safety Code is repealed.

SEC. 17. Section 7054.6 of the Health and Safety Code is amended to read:

7054.6. (a) Cremated remains may be removed in a durable container from the place of cremation or interment and kept in the dwelling owned or occupied by the person having the right to control disposition of the remains under Section 7100, or the durable container holding the cremated remains may be kept in a church or religious shrine, if written permission of the church or religious shrine is obtained and there is no conflict with local use permit requirements or zoning laws, if the removal is under the authority of a permit for disposition granted under Section 103060. The placement, in any place, of six or more cremated remains under this section does not constitute the place a cemetery, as defined in Section 7003.

(b) Prior to disposition of cremated remains, every licensee or registrant pursuant to Chapter 12 (commencing with Section 7600) or Chapter 19 (commencing with Section 9600) of Division 3 of the Business and Professions Code, and the agents and employees of the licensee or registrant shall do all of the following:

(1) Remove the cremated remains from the place of cremation in a durable container.

(2) Keep the cremated remains in a durable container.

(3) Store the cremated remains in a place free from exposure to the elements.

(4) Responsibly maintain the cremated remains.

SEC. 18. Section 7104.1 of the Health and Safety Code is amended to read:

7104.1. If, within 30 days after the coroner notifies or diligently attempts to notify the person responsible for the interment of a decedent's remains which are in the possession of the coroner, the person fails, refuses, or neglects to inter the remains, the coroner may inter the remains. The coroner may recover any expenses of the interment from the responsible person.

SEC. 19. Section 7109 of the Health and Safety Code is amended to read:

7109. The court shall allow costs and reasonable attorney's fees to a prevailing plaintiff against all defendants, other than the coroner.

SEC. 20. Section 7116 of the Health and Safety Code is amended to read:

7116. Cremated remains may be scattered in areas where no local prohibition exists, provided that the cremated remains are not distinguishable to the public, are not in a container, and that the person who has control over disposition of the cremated remains has obtained written permission of the property owner or governing agency to scatter on the property. A state or local agency may adopt an ordinance, regulation, or policy, as appropriate, authorizing, consistent with this section, or specifically prohibiting, the scattering of cremated human remains on lands under the agency's jurisdiction. The scattering of the cremated remains of more than one person in one location pursuant to this section shall not create a cemetery pursuant to Section 7003 or any other provision of law.

SEC. 21. Section 7200 of the Health and Safety Code is amended to read:

7200. Every head of a public institution, city or county undertaker, or state, county, or city officer having charge or control of remains to be interred at public expense shall use due diligence to notify the relatives of the decedent. In the absence of any known relative of the decedent desiring to direct the disposition of the remains in a manner other than provided in this chapter, and upon written request of the state department that these notices are required for a definite period specified in the request, that officer shall notify the state department immediately after the lapse of twenty-four hours after death, stating, whenever possible, the name, age, sex, and cause of death of the decedent.

SEC. 22. The heading of Chapter 1 (commencing with Section 8100) of Part 1 of Division 8 of the Health and Safety Code is amended to read:

CHAPTER 1. DEFINITIONS

SEC. 23. Section 8100 of the Health and Safety Code is amended to read:

8100. The definitions set forth in Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 shall be applicable to this division.

SEC. 24. Section 8113.2 of the Health and Safety Code is repealed.

SEC. 25. Section 8300 of the Health and Safety Code is amended to read:

8300. (a) A cemetery authority may make, adopt, amend, add to, revise, or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in this article.

(b) The cemetery authority's power includes, but is not limited to, the following:

(1) Restricting and limiting the use of all property within its cemetery.

(2) Regulating the uniformity, class, and kind of all markers, monuments, and other structures within the cemetery and its subdivisions, but shall not require, as a condition to the erection of a marker, monument, or other structure within the cemetery, that the marker, monument, or other structure be purchased from or through the cemetery authority.

(3) Prohibiting the erection of monuments, markers, or other structures in or upon any portion of the cemetery.

(4) Regulating or prohibiting monuments, effigies, and structures within any portion of the cemetery and provide for their removal.

(5) Regulating or preventing the introduction or care of plants or shrubs within the cemetery.

(6) Preventing interment in any part of the cemetery of human remains not entitled to interment and preventing the use of interment plots for purposes violative of its restrictions or rules and regulations.

(7) Regulating the conduct of persons and preventing improper assemblages in the cemetery.

(8) Making and enforcing rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted.

SEC. 26. Section 8301 of the Health and Safety Code is repealed.

SEC. 27. Section 8302 of the Health and Safety Code is repealed.

SEC. 28. Section 8303 of the Health and Safety Code is repealed.

SEC. 29. Section 8304 of the Health and Safety Code is repealed.

SEC. 30. Section 8305 of the Health and Safety Code is repealed.

SEC. 31. Section 8306 of the Health and Safety Code is repealed.

SEC. 32. Section 8307 of the Health and Safety Code is repealed.

SEC. 33. Section 8308 of the Health and Safety Code is repealed.

SEC. 34. Section 8571 of the Health and Safety Code is amended to read:

8571. (a) All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the cemetery authority, or as provided by law.

(b) A plot, the use of which has been conveyed by deed or certificate of ownership as a family plot, thereby becomes inalienable and shall be held as a family plot of the owner.

SEC. 35. Section 8650 of the Health and Safety Code is amended to read:

8650. (a) Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner, the plot shall become the family plot of the owner.

(b) If the owner dies without making disposition of the plot either in his or her will by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, any unoccupied portions of the plot shall pass according to the laws of intestate succession as set forth in Sections 6400 to 6413, inclusive, of the Probate Code.

(c) As of January 1, 2002, any unoccupied portions of a family plot that became inalienable pursuant to this section as it read on December 31, 2001, shall no longer be inalienable and shall pass according to the laws of intestate succession as set forth in Sections 6400 to 6413, inclusive, of the Probate Code. No sale, transfer, or donation of any unused portion of a family plot made alienable under this subdivision shall be made unless all persons entitled to interment in the family plot under Sections 8651 and 8652 are deceased or have expressly waived in writing the right to be interred in the family plot.

(d) The seller of a cemetery plot shall notify the buyer that unused portions of a family plot may pass through intestate succession unless written disposition is made by the buyer and may be sold, transferred, or donated by the buyer's heirs. The seller shall notify the buyer of the effect of a future transfer, sale, or donation of the unused portion of a family plot on any endowment for care or maintenance of the plot that the buyer may purchase in conjunction with the purchase of the cemetery plot.

SEC. 36. Section 8650.5 is added to the Health and Safety Code, to read:

8650.5. An affidavit executed by a person who is the owner of the plot by virtue of the laws of intestate succession or by his or her attorney-in-fact, setting forth the fact of the death of the owner, the

absence of a disposition of the plot by the owner in his or her will by a specific devise, the name of the person or persons who have rights to the plot under the intestate succession laws of the state, and the consent of that person or those persons to the sale of the plot by the cemetery authority, shall constitute complete authorization to the cemetery authority to permit any sale of the unoccupied portions of the plot.

CHAPTER 437

An act to add Section 798.43.1 to the Civil Code, relating to mobilehomes.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 798.43.1 is added to the Civil Code, to read:

798.43.1. (a) The management of a master-meter park shall give written notice to homeowners and residents on or before February 1 of each year in their utility billing statements about assistance to low-income persons for utility costs available under the California Alternate Rates for Energy (CARE) program, established pursuant to Section 739.1 of the Public Utilities Code. The notice shall include CARE information available to master-meter customers from their serving utility, to include, at a minimum: (1) the fact that CARE offers a discount on monthly gas or electric bills for qualifying low-income residents; and (2) the telephone number of the serving utility which provides CARE information and applications. The park shall also post the notice in a conspicuous place in the clubhouse, or if there is no clubhouse, in a conspicuous public place in the park.

(b) The management of a master-meter park may accept and help process CARE program applications from homeowners and residents in the park, fill in the necessary account or other park information required by the serving utility to process the applications, and send the applications to the serving utility. The management shall not deny a homeowner or resident who chooses to submit a CARE application to the utility himself or herself any park information, including a utility account number, the serving utility requires to process a homeowner or resident CARE program application.

(c) The management of a master-meter park shall pass through the full amount of the CARE program discount in monthly utility billings to homeowners and residents who have qualified for the CARE rate

schedule, as defined in the serving utility's applicable rate schedule. The management shall notice the discount on the billing statement of any homeowner or resident who has qualified for the CARE rate schedule as either the itemized amount of the discount or a notation on the statement that the homeowner or resident is receiving the CARE discount on the electric bill, the gas bill, or both the electric and gas bills.

(d) ''Master-meter park'' as used in this section means ''master-meter customer'' as used in Section 739.5 of the Public Utilities Code.

CHAPTER 438

An act to amend Section 6068.11 of the Business and Professions Code, and to amend Sections 2924b, 2924c, 2924d, and 2924g of, and to add Section 2941.1 to, the Civil Code, relating to trustees and attorneys, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 2, 2001.]

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

SECTION 1. Section 6068.11 of the Business and Professions Code is amended to read:

6068.11. (a) The Legislature finds and declares that the opinion in State Farm Mutual Auto Insurance Company v. Federal Insurance Company (1999) 72 Cal. App. 4th 1422, raises issues concerning the relationship between an attorney and an insurer when the attorney is retained by the insurer to represent the insured. These issues involve both the Rules of Professional Conduct for attorneys and procedural issues affecting the conduct of litigation.

(b) The board in consultation with representatives of associations representing the defense bar, the plaintiffs bar, the insurance industry and the Judicial Council, shall conduct a study concerning the legal and professional responsibility issues that may arise as a result of the relationship between an attorney and an insurer when the attorney is retained by the insurer to represent an insured, and subsequently, the attorney is retained to represent a party against another party insured by the insurer. The board shall prepare a report that identifies and analyzes the issues and, if appropriate, provides recommendations for changes to the Rules of Professional Conduct and relevant statutes. The board shall submit the report to the Legislature and the Supreme Court of California on or before July 1, 2002.

(c) 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. 2. Section 2924b of the Civil Code is amended to read:

2924b. (a) Any person desiring a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale upon real property or an estate for years therein, as to which deed of trust or mortgage the power of sale cannot be exercised until these notices are given for the time and in the manner provided in Section 2924 may, at any time subsequent to recordation of the deed of trust or mortgage and prior to recordation of notice of default thereunder, cause to be filed for record in the office of the recorder of any county in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of the notice of default and of sale. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed, shall identify the deed of trust or mortgage by stating the names of the parties thereto, the date of recordation thereof, and the book and page where the deed of trust or mortgage is recorded or the recorder's number, and shall be in substantially the following form:

"In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded _____, 19__, in Book _____ page ____ records of ____ County, (or filed for record with recorder's serial number ____, _____ County) California, executed by ____ as trustor (or mortgagor) in which _____, is named as beneficiary (or mortgagee) and _____ as trustee be mailed to

_____ at _____.
Name Address

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

Signature _____"

Upon the filing for record of the request, the recorder shall index in the general index of grantors the names of the trustors (or mortgagor) recited therein and the names of persons requesting copies.

(b) The mortgagee, trustee, or other person authorized to record the notice of default shall do each of the following:

(1) Within 10 business days following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon,

addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(2) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(3) As used in paragraphs (1) and (2), the ''last known address'' of each trustor or mortgagor means the last business or residence address actually known by the mortgagee, beneficiary, trustee, or other person authorized to record the notice of default. The beneficiary shall inform the trustee of the trustor's last address actually known by the beneficiary. However, the trustee shall incur no liability for failing to send any notice to the last address unless the trustee has actual knowledge of it.

(c) The mortgagee, trustee, or other person authorized to record the notice of default shall do the following:

(1) Within one month following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person set forth in paragraph (2), provided that the estate or interest of any person entitled to receive notice under this subdivision is acquired by an instrument sufficient to impart constructive notice of the estate or interest in the land or portion thereof which is subject to the deed of trust or mortgage being foreclosed, and provided the instrument is recorded in the office of the county recorder so as to impart that constructive notice prior to the recording date of the notice of default and provided the instrument as so recorded sets forth a mailing address which the county recorder shall use, as instructed within the instrument, for the return of the instrument after recording, and which address shall be the address used for the purposes of mailing notices herein.

(2) The persons to whom notice shall be mailed under this subdivision are:

(A) The successor in interest, as of the recording date of the notice of default, of the estate or interest or any portion thereof of the trustor or mortgagor of the deed of trust or mortgage being foreclosed.

(B) The beneficiary or mortgagee of any deed of trust or mortgage recorded subsequent to the deed of trust or mortgage being foreclosed,

or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or a recorded statement of subordination to the deed of trust or mortgage being foreclosed.

(C) The assignee of any interest of the beneficiary or mortgagee described in subparagraph (B), as of the recording date of the notice of default.

(D) The vendee of any contract of sale, or the lessee of any lease, of the estate or interest being foreclosed which is recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or statement of subordination to the deed of trust or mortgage being foreclosed.

(E) The successor in interest to the vendee or lessee described in subparagraph (D), as of the recording date of the notice of default.

(F) The Office of the Controller, Sacramento, California, where, as of the recording date of the notice of default, a ''Notice of Lien for Postponed Property Taxes'' has been recorded against the real property to which the notice of default applies.

(3) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail, an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale addressed to each person to whom a copy of the notice of default is to be mailed as provided in paragraphs (1) and (2), and addressed to the office of any state taxing agency, Sacramento, California, which has recorded a notice of tax lien prior to the recording date of the notice of default against the real property to which the notice of default applies.

(4) Provide a copy of the notice of sale to the Internal Revenue Service, in accordance with Section 7425 of the Internal Revenue Code and any applicable federal regulation, if a ''Notice of Federal Tax Lien under Internal Revenue laws'' has been recorded against the real property to which the notice of sale applies.

(5) The mailing of notices in the manner set forth in paragraph (1) shall not impose upon any licensed attorney, agent, or employee of any person entitled to receive notices as herein set forth any duty to communicate the notice to the entitled person from the fact that the mailing address used by the county recorder is the address of the attorney, agent, or employee.

(d) Any deed of trust or mortgage with power of sale hereafter executed upon real property or an estate for years therein may contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to any person or party thereto at the address of the person given therein, and a copy of any notice of default

and of any notice of sale shall be mailed to each of these at the same time and in the same manner required as though a separate request therefor had been filed by each of these persons as herein authorized. If any deed of trust or mortgage with power of sale executed after September 19, 1939, except a deed of trust or mortgage of any of the classes excepted from the provisions of Section 2924, does not contain a request of the trustor or mortgagor for special notice at the address of the person given therein or does contain such a request but no address of the person is given therein and if no request for special notice by the trustor or mortgagor in substantially the form set forth in this section has subsequently been recorded, a copy of the notice of default shall be published once a week for at least four weeks in a newspaper of general circulation in the county in which the property is situated, the publication to commence within 10 business days after the filing of the notice of default. In lieu of publication, a copy of the notice of default may be delivered personally to the trustor or mortgagor within the 10 business days or at any time before publication is completed, or by posting the notice of default in a conspicuous place on the property and mailing the notice to the last known address of the trustor.

(e) Any person required to mail a copy of a notice of default or notice of sale to each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or certified mail shall simultaneously cause to be deposited in the United States mail, with postage prepaid and mailed by first-class mail, an envelope containing an additional copy of the required notice addressed to each trustor or mortgagor at the same address to which the notice is sent by registered or certified mail pursuant to subdivision (b) or (c). The person shall execute and retain an affidavit identifying the notice mailed, showing the name and residence or business address of that person, that he or she is over the age of 18 years, the date of deposit in the mail, the name and address of the trustor or mortgagor to whom sent, and that the envelope was sealed and deposited in the mail with postage fully prepaid. In the absence of fraud, the affidavit required by this subdivision shall establish a conclusive presumption of mailing.

(f) No request for a copy of any notice filed for record pursuant to this section, no statement or allegation in the request, and no record thereof shall affect the title to real property or be deemed notice to any person that any person requesting copies of notice has or claims any right, title, or interest in, or lien or charge upon the property described in the deed of trust or mortgage referred to therein.

(g) ''Business day,'' as used in this section, has the meaning specified in Section 9.

SEC. 3. Section 2924c of the Civil Code is amended to read:

2924c. (a) (1) Whenever all or a portion of the principal sum of any obligation secured by deed of trust or mortgage on real property or an

estate for years therein hereafter executed has, prior to the maturity date fixed in that obligation, become due or been declared due by reason of default in payment of interest or of any installment of principal, or by reason of failure of trustor or mortgagor to pay, in accordance with the terms of that obligation or of the deed of trust or mortgage, taxes, assessments, premiums for insurance, or advances made by beneficiary or mortgagee in accordance with the terms of that obligation or of the deed of trust or mortgage, the trustor or mortgagor or his or her successor in interest in the mortgaged or trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any other person having a subordinate lien or encumbrance of record thereon, at any time within the period specified in subdivision (e), if the power of sale therein is to be exercised, or, otherwise at any time prior to entry of the decree of foreclosure, may pay to the beneficiary or the mortgagee or their successors in interest, respectively, the entire amount due, at the time payment is tendered, with respect to (A) all amounts of principal, interest, taxes, assessments, insurance premiums, or advances actually known by the beneficiary to be, and that are, in default and shown in the notice of default, under the terms of the deed of trust or mortgage and the obligation secured thereby, (B) all amounts in default on recurring obligations not shown in the notice of default, and (C) all reasonable costs and expenses, subject to subdivision (c), which are actually incurred in enforcing the terms of the obligation, deed of trust, or mortgage, and trustee's or attorney's fees, subject to subdivision (d), other than the portion of principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust or mortgage shall be reinstated and shall be and remain in force and effect, the same as if the acceleration had not occurred. This section does not apply to bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations or made by a public utility subject to the Public Utilities Code. For the purposes of this subdivision, the term ''recurring obligation'' means all amounts of principal and interest on the loan, or rents, subject to the deed of trust or mortgage in default due after the notice of default is recorded; all amounts of principal and interest or rents advanced on senior liens or leaseholds which are advanced after the recordation of the notice of default; and payments of taxes, assessments, and hazard insurance advanced after recordation of the notice of default. Where the beneficiary or mortgagee has made no advances on defaults which would constitute recurring obligations, the beneficiary or mortgagee may require the trustor or mortgagor to provide reliable written evidence that the amounts have been paid prior to reinstatement.

(2) If the trustor, mortgagor, or other person authorized to cure the default pursuant to this subdivision does cure the default, the beneficiary or mortgagee or the agent for the beneficiary or mortgagee shall, within 21 days following the reinstatement, execute and deliver to the trustee a notice of rescission which rescinds the declaration of default and demand for sale and advises the trustee of the date of reinstatement. The trustee shall cause the notice of rescission to be recorded within 30 days of receipt of the notice of rescission and of all allowable fees and costs.

No charge, except for the recording fee, shall be made against the trustor or mortgagor for the execution and recordation of the notice which rescinds the declaration of default and demand for sale.

(b) (1) The notice, of any default described in this section, recorded pursuant to Section 2924, and mailed to any person pursuant to Section 2924b, shall begin with the following statement, printed or typed thereon:

''IMPORTANT NOTICE [14-point boldface type if printed or in capital letters if typed]

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, [14-point boldface type if printed or in capital letters if typed] and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is _____ as of _____
(Date)

and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable

written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

_____

(Name of beneficiary or mortgagee)

_____

(Mailing address)

_____

(Telephone)

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. [14-point boldface type if printed or in capital letters if typed]''

Unless otherwise specified, the notice, if printed, shall appear in at least 12-point boldface type.

If the obligation secured by the deed of trust or mortgage is a contract or agreement described in paragraph (1) or (4) of subdivision (a) of

Section 1632, the notice required herein shall be in Spanish if the trustor requested a Spanish language translation of the contract or agreement pursuant to Section 1632. If the obligation secured by the deed of trust or mortgage is contained in a home improvement contract, as defined in Sections 7151.2 and 7159 of the Business and Professions Code, which is subject to Title 2 (commencing with Section 1801), the seller shall specify on the contract whether or not the contract was principally negotiated in Spanish and if the contract was principally negotiated in Spanish, the notice required herein shall be in Spanish. No assignee of the contract or person authorized to record the notice of default shall incur any obligation or liability for failing to mail a notice in Spanish unless Spanish is specified in the contract or the assignee or person has actual knowledge that the secured obligation was principally negotiated in Spanish. Unless specified in writing to the contrary, a copy of the notice required by subdivision (c) of Section 2924b shall be in English.

(2) Any failure to comply with the provisions of this subdivision shall not affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value and without notice.

(c) Costs and expenses which may be charged pursuant to Sections 2924 to 2924i, inclusive, shall be limited to the costs incurred for recording, mailing, including certified and express mail charges, publishing, and posting notices required by Sections 2924 to 2924i, inclusive, postponement pursuant to Section 2924g not to exceed fifty dollars ($50) per postponement and a fee for a trustee's sale guarantee or, in the event of judicial foreclosure, a litigation guarantee. For purposes of this subdivision, a trustee or beneficiary may purchase a trustee's sale guarantee at a rate meeting the standards contained in Sections 12401.1 and 12401.3 of the Insurance Code.

(d) Trustee's or attorney's fees which may be charged pursuant to subdivision (a), or until the notice of sale is deposited in the mail to the trustor as provided in Section 2924b, if the sale is by power of sale contained in the deed of trust or mortgage, or, otherwise at any time prior to the decree of foreclosure, are hereby authorized to be in a base amount that does not exceed three hundred dollars ($300) if the unpaid principal sum secured is one hundred fifty thousand dollars ($150,000) or less, or two hundred fifty dollars ($250) if the unpaid principal sum secured exceeds one hundred fifty thousand dollars ($150,000), plus one-half of 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars ($50,000) up to and including one hundred fifty thousand dollars ($150,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars ($150,000) up to and including five hundred thousand dollars ($500,000), plus one-eighth of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars

($500,000). Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where the charge does not exceed the amounts authorized herein. For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded.

(e) Reinstatement of a monetary default under the terms of an obligation secured by a deed of trust, or mortgage may be made at any time within the period commencing with the date of recordation of the notice of default until five business days prior to the date of sale set forth in the initial recorded notice of sale.

In the event the sale does not take place on the date set forth in the initial recorded notice of sale or a subsequent recorded notice of sale is required to be given, the right of reinstatement shall be revived as of the date of recordation of the subsequent notice of sale, and shall continue from that date until five business days prior to the date of sale set forth in the subsequently recorded notice of sale.

In the event the date of sale is postponed on the date of sale set forth in either an initial or any subsequent notice of sale, or is postponed on the date declared for sale at an immediately preceding postponement of sale, and, the postponement is for a period which exceeds five business days from the date set forth in the notice of sale, or declared at the time of postponement, then the right of reinstatement is revived as of the date of postponement and shall continue from that date until five business days prior to the date of sale declared at the time of the postponement.

Nothing contained herein shall give rise to a right of reinstatement during the period of five business days prior to the date of sale, whether the date of sale is noticed in a notice of sale or declared at a postponement of sale.

Pursuant to the terms of this subdivision, no beneficiary, trustee, mortgagee, or their agents or successors shall be liable in any manner to a trustor, mortgagor, their agents or successors or any beneficiary under a subordinate deed of trust or mortgage or any other person having a subordinate lien or encumbrance of record thereon for the failure to allow a reinstatement of the obligation secured by a deed of trust or mortgage during the period of five business days prior to the sale of the security property, and no such right of reinstatement during this period is created by this section. Any right of reinstatement created by this section is terminated five business days prior to the date of sale set forth in the initial date of sale, and is revived only as prescribed herein and only as of the date set forth herein.

As used in this subdivision, the term ''business day'' has the same meaning as specified in Section 9.

SEC. 4. Section 2924d of the Civil Code is amended to read:

2924d. (a) Commencing with the date that the notice of sale is deposited in the mail, as provided in Section 2924b, and until the property is sold pursuant to the power of sale contained in the mortgage or deed of trust, a beneficiary, trustee, mortgagee, or his or her agent or successor in interest, may demand and receive from a trustor, mortgagor, or his or her agent or successor in interest, or any beneficiary under a subordinate deed of trust, or any other person having a subordinate lien or encumbrance of record those reasonable costs and expenses, to the extent allowed by subdivision (c) of Section 2924c, which are actually incurred in enforcing the terms of the obligation and trustee's or attorney's fees which are hereby authorized to be in a base amount which does not exceed four hundred twenty-five dollars ($425) if the unpaid principal sum secured is one hundred fifty thousand dollars ($150,000) or less, or three hundred sixty dollars ($360) if the unpaid principal sum secured exceeds one hundred fifty thousand dollars ($150,000), plus 1 percent of any portion of the unpaid principal sum secured exceeding fifty thousand dollars ($50,000) up to and including one hundred fifty thousand dollars ($150,000), plus one-half of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars ($150,000) up to and including five hundred thousand dollars ($500,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars ($500,000). For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded. Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where that charge does not exceed the amounts authorized herein. Any charge for trustee's or attorney's fees made pursuant to this subdivision shall be in lieu of and not in addition to those charges authorized by subdivision (d) of Section 2924c.

(b) Upon the sale of property pursuant to a power of sale, a trustee, or his or her agent or successor in interest, may demand and receive from a beneficiary, or his or her agent or successor in interest, or may deduct from the proceeds of the sale, those reasonable costs and expenses, to the extent allowed by subdivision (c) of Section 2924c, which are actually incurred in enforcing the terms of the obligation and trustee's or attorney's fees which are hereby authorized to be in an amount which does not exceed four hundred twenty-five dollars ($425) or one percent of the unpaid principal sum secured, whichever is greater. For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded. Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where that charge does not exceed the amount authorized herein. Any charges for trustee's or attorney's fees

made pursuant to this subdivision shall be in lieu of and not in addition to those charges authorized by subdivision (a) of this section and subdivision (d) of Section 2924c.

(c) (1) No person shall pay or offer to pay or collect any rebate or kickback for the referral of business involving the performance of any act required by this article.

(2) Any person who violates this subdivision shall be liable to the trustor for three times the amount of any rebate or kickback, plus reasonable attorney's fees and costs, in addition to any other remedies provided by law.

(3) No violation of this subdivision shall affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value without notice.

(d) It shall not be unlawful for a trustee to pay or offer to pay a fee to an agent or subagent of the trustee for work performed by the agent or subagent in discharging the trustee's obligations under the terms of the deed of trust. Any payment of a fee by a trustee to an agent or subagent of the trustee for work performed by the agent or subagent in discharging the trustee's obligations under the terms of the deed of trust shall be conclusively presumed to be lawful and valid if the fee, when combined with other fees of the trustee, does not exceed in the aggregate the trustee's fee authorized by subdivision (d) of Section 2924c or subdivision (a) or (b) of this section.

(e) When a court issues a decree of foreclosure, it shall have discretion to award attorney's fees, costs, and expenses as are reasonable, if provided for in the note, deed of trust, or mortgage, pursuant to Section 580c of the Code of Civil Procedure.

SEC. 5. Section 2924g of the Civil Code is amended to read:

2924g. (a) All sales of property under the power of sale contained in any deed of trust or mortgage shall be held in the county where the property or some part thereof is situated, and shall be made at auction, to the highest bidder, between the hours of 9 a.m. and 5 p.m. on any business day, Monday through Friday.

The sale shall commence at the time and location specified in the notice of sale. Any postponement shall be announced at the time and location specified in the notice of sale for commencement of the sale or pursuant to paragraph (1) of subdivision (c).

If the sale of more than one parcel of real property has been scheduled for the same time and location by the same trustee, (1) any postponement of any of the sales shall be announced at the time published in the notice of sale, (2) the first sale shall commence at the time published in the notice of sale or immediately after the announcement of any postponement, and (3) each subsequent sale shall take place as soon as possible after the preceding sale has been completed.

(b) When the property consists of several known lots or parcels they shall be sold separately unless the deed of trust or mortgage provides otherwise. When a portion of the property is claimed by a third person, who requires it to be sold separately, the portion subject to the claim may be thus sold. The trustor, if present at the sale, may also, unless the deed of trust or mortgage otherwise provides, direct the order in which property shall be sold, when the property consists of several known lots or parcels which may be sold to advantage separately, and the trustee shall follow that direction. After sufficient property has been sold to satisfy the indebtedness no more can be sold.

If the property under power of sale is in two or more counties the public auction sale of all of the property under the power of sale may take place in any one of the counties where the property or a portion thereof is located.

(c) (1) There may be a postponement of the sale proceedings at any time prior to the completion of the sale at the discretion of the trustee, or upon instruction by the beneficiary to the trustee that the sale proceedings be postponed.

There may be a maximum of three postponements of the sale proceedings pursuant to this subdivision. In the event that the sale proceedings are postponed more than three times, the scheduling of any further sale proceedings shall be preceded by the giving of a new notice of sale in the manner prescribed by Section 2924f.

(2) The trustee shall postpone the sale upon the order of any court of competent jurisdiction, or where stayed by operation of law, or by the mutual agreement, whether oral or in writing, of any trustor and any beneficiary or any mortgagor and any mortgagee. Any postponement pursuant to this paragraph shall not be a postponement for purposes of determining the maximum number of postponements permitted pursuant to this subdivision nor shall a postponement resulting from the prohibition upon a sale within seven days from the expiration of an injunction, restraining order, or stay as provided in subdivision (d) be deemed a postponement for purposes of this subdivision. In addition, one postponement by the trustee based upon a reasonable belief that a petition for bankruptcy has been filed shall not be a postponement for purposes of determining the maximum number of postponements permitted pursuant to this subdivision.

(d) The notice of each postponement and the reason therefor shall be given by public declaration by the trustee at the time and place last appointed for sale. A public declaration of postponement shall also set forth the new date, time, and place of sale and the place of sale shall be the same place as originally fixed by the trustee for the sale. No other notice of postponement need be given. However, the sale shall be conducted no sooner than on the seventh day after the earlier of (1)

dismissal of the action or (2) expiration or termination of the injunction, restraining order, or stay (which required postponement of the sale), whether by entry of an order by a court of competent jurisdiction, operation of law, or otherwise, unless the injunction, restraining order, or subsequent order expressly directs the conduct of the sale within that seven-day period. For purposes of this subdivision, the seven-day period shall not include the day on which the action is dismissed, or the day on which the injunction, restraining order, or stay expires or is terminated. If the sale had been scheduled to occur, but this subdivision precludes its conduct during that seven-day period, a new notice of postponement shall be given if the sale had been scheduled to occur during that seven-day period. The trustee shall maintain records of each postponement and the reason therefor.

(e) Notwithstanding the time periods established under subdivision (d), if postponement of a sale is based on a stay imposed by Title 11 of the United States Code (bankruptcy), the sale shall be conducted no sooner than the expiration of the stay imposed by that title and the seven-day provision of subdivision (d) shall not apply.

SEC. 6. Section 2941.1 is added to the Civil Code, to read:

2941.1. Notwithstanding any other provision of law, if no payoff demand statement is issued pursuant to Section 2943, nothing in Section 2941 shall be construed to prohibit the charging of a reconveyance fee.

SEC. 7. Sections 3 to 6, inclusive, of this act shall become operative on January 1, 2002.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to extend a deadline to permit thorough study of issues concerning certain relationships between attorneys, insurers, and insureds, and to clarify ambiguities in the foreclosure law and to make other related changes in that law, it is necessary that this act take effect immediately.

CHAPTER 439

An act to amend Section 124250 of the Health and Safety Code, relating to battered women's shelters.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 124250 of the Health and Safety Code is amended to read:

124250. (a) The following definitions shall apply for purposes of this section:

(1) ''Domestic violence'' means the infliction or threat of physical harm against past or present adult or adolescent female intimate partners, and shall include physical, sexual, and psychological abuse against the woman, and is a part of a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over, that woman.

(2) ''Shelter-based'' means an established system of services where battered women and their children may be provided safe or confidential emergency housing on a 24-hour basis, including, but not limited to, hotel or motel arrangements, haven, and safe houses.

(3) ''Emergency shelter'' means a confidential or safe location that provides emergency housing on a 24-hour basis for battered women and their children.

(b) The Maternal and Child Health Branch of the State Department of Health Services shall administer a comprehensive shelter-based services grant program to battered women's shelters pursuant to this section.

(c) The Maternal and Child Health Branch shall administer grants, awarded as the result of a request for application process, to battered women's shelters that propose to maintain shelters or services previously granted funding pursuant to this section, to expand existing services or create new services, and to establish new battered women's shelters to provide services, in any of the following four areas:

(1) Emergency shelter to women and their children escaping violent family situations.

(2) Transitional housing programs to help women and their children find housing and jobs so that they are not forced to choose between returning to a violent relationship or becoming homeless. The programs may offer up to 18 months of housing, case management, job training and placement, counseling, support groups, and classes in parenting and family budgeting.

(3) Legal and other types of advocacy and representation to help women and their children pursue the appropriate legal options.

(4) Other support services for battered women and their children.

(d) (1) The Maternal and Child Health Branch of the State Department of Health Services shall conduct a minimum of one site visit per grant term to each agency funded to provide shelter-based services to battered women and their children. The purpose of the site visit shall

be a performance assessment of, and technical assistance for, each agency visited. The performance assessment shall include, but need not be limited to, a review of all of the following:

(A) Progress in meeting program goals and objectives.

(B) Agency organization and facilities.

(C) Personnel policies, files, and training.

(D) Recordkeeping, budgeting, and expenditures.

(E) Documentation, data collection, and client confidentiality.

(2) Subsequent to each site visit conducted under paragraph (1), the Maternal and Child Health Branch shall provide a written report to the agency summarizing the agency's performance, any deficiencies noted, and any corrective action needed.

(3) Where an agency receives funding from both the Maternal and Child Health Branch of the State Department of Health Services and the Domestic Violence Branch of the Office of Criminal Justice Planning during any grant cycle, the Maternal and Child Health Branch and the Domestic Violence Branch shall, to the extent feasible, coordinate agency site visits and share performance assessment data with the goal of improving efficiency, eliminating duplication, and reducing administrative costs.

(e) In implementing the grant program pursuant to this section, the State Department of Health Services shall consult with an advisory council that shall remain in existence until January 1, 2003. The council shall be composed of not to exceed 13 voting members and two nonvoting members appointed as follows:

(1) Seven members appointed by the Governor.

(2) Three members appointed by the Speaker of the Assembly.

(3) Three members appointed by the Senate Committee on Rules.

(4) Two nonvoting ex officio members who shall be Members of the Legislature, one appointed by the Speaker of the Assembly and one appointed by the Senate Committee on Rules. Any Member of the Legislature appointed to the council shall meet with, and participate in the activities of, the council to the extent that participation is not incompatible with his or her position as a Member of the Legislature.

The membership of the council shall consist of domestic violence advocates, battered women service providers, and representatives of women's organizations, law enforcement, and other groups involved with domestic violence. At least one-half of the council membership shall consist of domestic violence advocates or battered women service providers from organizations such as the California Alliance Against Domestic Violence.

It is the intent of the Legislature that the council membership reflect the ethnic, racial, cultural, and geographic diversity of the state.

(f) The department shall collaborate closely with the council in the development of funding priorities, the framing of the Request for Proposals, and the solicitation of proposals.

(g) (1) The Maternal and Child Health Branch of the State Department of Health Services shall administer grants, awarded as the result of a request for application process, to agencies to conduct demonstration projects to serve battered women, including, but not limited to, creative and innovative service approaches, such as community response teams and pilot projects to develop new interventions emphasizing prevention and education, and other support projects identified by the advisory council.

(2) For purposes of this subdivision, "agency" means a state agency, a local government, a community-based organization, or a nonprofit organization.

(h) It is the intent of the Legislature that services funded by this program include services in underserved and ethnic and racial communities. Therefore, the Maternal and Child Health Branch of the State Department of Health Services shall do all of the following:

(1) Fund shelters pursuant to this section that reflect the ethnic, racial, economic, cultural, and geographic diversity of the state.

(2) Target geographic areas and ethnic and racial communities of the state whereby, based on a needs assessment, it is determined that no shelter-based services exist or that additional resources are necessary.

(i) The director may award additional grants to shelter-based agencies when it is determined that there exists a critical need for shelter or shelter-based services.

(j) As a condition of receiving funding pursuant to this section, battered women's shelters shall do all of the following:

(1) Provide matching funds or in-kind contributions equivalent to not less than 20 percent of the grant they would receive. The matching funds or in-kind contributions may come from other governmental or private sources.

(2) Ensure that appropriate staff and volunteers having client contact meet the definition of ''domestic violence counselor'' as specified in subdivision (a) of Section 1037.1 of the Evidence Code. The minimum training specified in paragraph (2) of subdivision (a) of Section 1037.1 of the Evidence Code shall be provided to those staff and volunteers who do not meet the requirements of paragraph (1) of subdivision (a) of Section 1037.1 of the Evidence Code.

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CHAPTER 440

An act to amend and repeal Section 309.5 of the Public Utilities Code, relating to public utilities.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 309.5 of the Public Utilities Code, as amended by Chapter 1005 of the Statutes of 1999, is amended to read:

309.5. (a) There is within the commission a division to represent the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the division shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. The amendments made to this section during the 2001 portion of the 2001–02 Regular Session are not intended to expand the representation and responsibilities of the division.

(b) The director of the division shall be appointed by and serve at the pleasure of the Governor, subject to confirmation by the Senate. The director shall annually appear before the appropriate policy committees of the Assembly and the Senate to report on the activities of the division.

(c) The commission shall, by rule or order, provide for the assignment of personnel to, and the functioning of, the division. The division may employ experts necessary to carry out its functions. Personnel and resources shall be provided to the division at a level sufficient to ensure that customer and subscriber interests are fairly represented in all significant proceedings.

(d) The commission shall develop appropriate procedures to ensure that the existence of the division does not create a conflict of roles for any employee or his or her representative. The procedures shall include, but shall not be limited to, the development of a code of conduct and procedures for ensuring that advocates and their representatives on a particular case or proceeding are not advising decisionmakers on the same case or proceeding.

(e) The division may compel the production or disclosure of any information it deems necessary to perform its duties from entities regulated by the commission provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission if there is no assigned commissioner.

(f) There is hereby created the Public Utilities Commission Ratepayer Advocate Account in the General Fund. Moneys from the Public Utilities Commission Utilities Reimbursement Account in the

General Fund shall be transferred in the annual Budget Act to the Public Utilities Commission Ratepayer Advocate Account. The funds in the Public Utilities Commission Ratepayer Advocate Account shall be utilized exclusively by the division in the performance of its duties. The annual budget for the division shall be separately identified in the commission's annual budget request. The commission shall annually submit a staffing report containing a comparison of the staffing levels for each five-year period.

(g) The division shall agree to meet and confer in an informal setting with a regulated entity prior to issuing a report or pleading to the commission regarding alleged misconduct, or a violation of a law or a commission rule or order, raised by the division in a complaint. The meet and confer process shall be utilized as an informal means of attempting to reach resolution or consensus on issues raised by the division regarding any regulated entity in such a complaint proceeding.

SEC. 2. Section 309.5 of the Public Utilities Code, as added by Section 4 of Chapter 856 of the Statutes of 1996, is repealed.

CHAPTER 441

An act to amend Section 11713.1 of, and to add Section 11709.3 to, the Vehicle Code, relating to vehicles.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 11709.3 is added to the Vehicle Code, to read:

11709.3. (a) Every dealer shall clearly and conspicuously display in its showroom at its established place of business, in a place that is easily accessible to prospective purchasers, a clear and conspicuous listing of each vehicle that the dealer has advertised for sale if the vehicle meets all of the following requirements:

(1) The vehicle is advertised for sale in a newspaper or other publication of general circulation, or in any other advertising medium that is disseminated to the public generally, including, but not limited to, radio, television, or the Internet.

(2) The vehicle is advertised at a specific price and is required pursuant to subdivision (a) of Section 11713.1 to be identified in the advertisement by its vehicle identification number or license number.

(3) The vehicle has not been sold or leased during the time that the advertised price is valid.

(4) The vehicle does not clearly and conspicuously have displayed on or in it the advertised price.

(b) The listing required by subdivision (a) may be satisfied by clearly and conspicuously posting in the showroom a complete copy of any print advertisement that includes vehicles currently advertised for sale or by clearly and conspicuously displaying in the showroom a list of currently advertised vehicles described by make, model, model-year, vehicle identification number, or license number, and the advertised price.

SEC. 2. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) Advertise any specific vehicle for sale without identifying the vehicle by either its license number or that portion of the vehicle identification number that distinguishes the vehicle from all other vehicles of the same make, model, model-year, and type. Any advertisement that offers for sale a class of new vehicles in a dealer's inventory, consisting of five or more vehicles, that are all of the same make, model, model-year, and type is not required to include in the advertisement the vehicle identification numbers or license numbers of those vehicles.

(b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, the California tire fee, as defined in Section 42885 of the Public Resources Code, emission testing fees not exceeding fifty dollars ($50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document preparation charge. The dealer document preparation charge shall not exceed forty-five dollars ($45).

(c) (1) Exclude from an advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer document preparation charge.

(2) The obligations imposed by paragraph (1) shall be satisfied by adding to the advertisement a statement containing no abbreviations and that is worded in substantially the following form: ''Plus government fees and taxes, any finance charges, any dealer document preparation charge, and any emission testing charge.''

(3) For purposes of paragraph (1), ''advertisement'' means any advertisement in a newspaper, magazine, direct mail publication, or handbill that is two or more columns in width or one column in width and more than seven inches in length, or on any Web page of a dealer's Web site that displays the price of a vehicle offered for sale on the

Internet, as that term is defined in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer document preparation charge, which charges shall not exceed forty-five dollars ($45) for the document preparation charge and not to exceed fifty dollars ($50) for emission testing plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed. Advertised vehicles shall be sold at or below the advertised total price, with statutorily permitted exclusions, regardless of whether the purchaser has knowledge of the advertised total price.

(f) (1) Advertise for sale, sell, or purchase for resale any new vehicle of a line-make for which the dealer does not hold a franchise.

(2) This subdivision does not apply to any transaction involving any of the following:

(A) A mobilehome.

(B) A recreational vehicle as defined in Section 18010 of the Health and Safety Code.

(C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(D) An off-highway motor vehicle subject to identification as defined in Section 38012.

(E) A manufactured home.

(F) A new vehicle that will be substantially altered or modified by a converter prior to resale.

(G) A commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds.

(H) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.

(g) Sell a park trailer, as specified in Section 18009.3 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term ''free'' includes merchandise or services offered for sale at a price less than the seller's cost of the merchandise or services.

(i) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as ''starting at,'' ''from,'' ''beginning as low as,'' or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

For purposes of this subdivision, in any newspaper advertisement for a vehicle that is two model-years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be (1) printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price, however, in no case shall the phrase be printed in less than 8-point type size, and (2) be disclosed immediately above, below, or beside the advertised price without any intervening words, pictures, marks, or symbols.

The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

(j) Use the term ''rebate'' or similar words such as ''cash back'' in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, ''cash price'' has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(*l*) Advertise a guaranteed trade-in allowance unless the guarantee is provided by the manufacturer or distributor.

(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Use the terms ''invoice,'' ''dealer's invoice,'' ''wholesale price,'' or similar terms that refer to a dealer's cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer's or distributor's invoice price to a dealer.

(B) A dealer's cost.

(2) This subdivision does not apply to either of the following:

(A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser initiates a discussion of the vehicle's invoice price or the dealer's cost for that vehicle.

(B) Any communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a ''commercial purchaser'' means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

(o) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is ''fully factory equipped.''

(q) Affix on any new vehicle a supplemental price sticker containing a price that represents the dealer's asking price which exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer's suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as ''added mark-up.''

(r) Advertise any underselling claim, such as ''we have the lowest prices'' or ''we will beat any dealer's price,'' unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) Advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a

condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision, ''incentive'' means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) Display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that franchisor a false name for the purchaser or false date for the date of sale.

(v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

(w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

(x) Fail to disclose, in a clear and conspicuous manner in at least 10-point bold type on the face of any contract for the retail sale of a new motor vehicle that this transaction is, or is not, subject to a fee received by an autobroker from the selling new motor vehicle dealer, and the name of the autobroker, if applicable.

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.

CHAPTER 442

An act to add Chapter 13 (commencing with Section 6292) to Part 1 of Division 4 of the Food and Agricultural Code, relating to pest control, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Chapter 13 (commencing with Section 6292) is added to Part 1 of Division 4 of the Food and Agricultural Code, to read:

CHAPTER 13. NAPA COUNTY WINEGRAPE PEST AND DISEASE CONTROL DISTRICT LAW

Article 1. Findings and Definitions

6292. The Legislature finds and declares all of the following:

(a) California is the leading producer of wine in the United States, accounting for 91 percent of total United States wine production and 72 percent of total wine sales in the United States.

(b) Winegrapes are grown in virtually every county for processing by more than 800 wineries located throughout the state.

(c) California grows more than 554,000 acres of winegrapes producing 3.3 million tons of grapes per year valued at more than one billion nine hundred million dollars ($1,900,000,000), with a direct and indirect impact on the state's economy totaling more than thirty-three billion dollars ($33,000,000,000). Napa Valley contributes more than four billion dollars ($4,000,000,000) to that total.

(d) Destructive pests and diseases, including winegrape pests and diseases, pose a significant and imminent threat to California's important grape and wine industry.

(e) The State of California has a great economic interest in protecting its agricultural products from further destruction by the Pierce's disease vector, the glassy-winged sharpshooter, and other harmful winegrape pests and diseases, which may occur in the future.

(f) Pierce's disease has already infested grape growing acreage in many California counties, including Napa County, resulting in devastating losses to growers and the wine industry.

(g) As a known vector for Pierce's disease, the glassy-winged sharpshooter has been determined to carry and spread Pierce's disease to many forms of California agriculture, usually with complete destruction to the infected crop. This destructive effect of the disease has been determined by experts in the viticulture field to be especially true with infected winegrapes.

(h) To avoid a potentially catastrophic loss to one of California's most important industries, the Legislature declares that this chapter is in the interest of the public health and welfare.

(i) This article is not intended to establish a precedent, or to supersede, reduce, or in any way alter government funding related to Pierce's disease and other pests in this state.

(j) The purposes of this article are enhanced by the many and varied efforts of the growers and marketers of other commodities related to this bacteria and its vectors.

(k) The Legislature further declares that it is in the interest of the public health and welfare that the creation of districts by this chapter not duplicate existing services already being provided to grape growers by the University of California Cooperative Extension Farm Advisor or the county agricultural commissioner.

6292.1. This chapter shall be known and may be cited as the Napa County Winegrape Pest and Disease Control District Law.

6292.2. It is the purpose of this chapter to make available a procedure for the organization, operation, government, and dissolution of districts to assist in the funding of the inspection, detection, and education of Pierce's disease as stated in the Napa County Glassy-Winged Sharpshooter Workplan, as approved by the California Department of Food and Agriculture and accepted by the Napa County Board of Supervisors, to prevent the spread of Pierce's disease by the glassy-winged sharpshooter. Additionally, it is the purpose of this chapter to address other pests and diseases that attack winegrape plants, and to collect and disseminate to winegrape producers in the district all relevant information and scientific studies concerning pest or pests, as well as to chart and determine the extent and location of any infestations.

Division 3 (commencing with Section 56000) of Title 5 of the Government Code does not apply to districts organized pursuant to this chapter.

6292.3. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter.

(a) ''Board'' or ''board of directors'' means the board of directors of a district.

(b) ''District'' means a winegrape pest and disease control district organized pursuant to this chapter.

(c) ''Owner'' includes joint owner, coowner, guardian, executor, administrator, or any other person or entity that holds property in a trust capacity under court appointment.

(d) ''Winegrape pest and disease'' means any pest or disease that is determined by the California Department of Food and Agriculture or the County Agricultural Commissioner to be a threat to the growing or viability of winegrapes, as defined in this section, or as defined in Section 5006.

(e) ''Winegrapes'' means grapes produced that are intended to be converted from their fresh form into grape juice, grape concentrate, wine, or any products thereof, including, but not limited to, high proof and brandy produced from winegrapes.

(f) ''Winegrape growing acreage'' means any parcel of real property with one acre, or more, of winegrape plants, grapes or grape products, regardless of the use of a grape product or products.

Article 2. Formation of Districts

6293. Proceedings for the formation of a district within Napa County shall be commenced by a petition that is either of the following:

(a) Signed by 50 percent or more of the owners of 65 percent or more of the affected land.

(b) Signed by 65 percent or more of the owners of 50 percent or more of the affected land.

The petition shall be addressed to, and filed with, the board of supervisors of the county.

6293.1. The petition may be filed in sections, each of which shall comply with all the requirements for a petition, except that a section need not contain the total number of signatures required for the petition.

6293.2. Signatures to the petition may be withdrawn at any time before it has been acted upon by filing with the clerk of the board of supervisors a declaration signed by the petitioner that states that it is the intention of the petitioner to withdraw his or her signature from the petition.

6293.3. (a) The petition shall state the name of the proposed district and shall set forth its boundaries or describe the lands to be included.

(b) It is a sufficient designation of the boundaries of a proposed district to recite that all the winegrape growing acreage in the county is to be included in the district, or that all the winegrape growing acreage in a designated area within the county is to be included in the district.

(c) If either designation is used, the outside boundary of the area so designated is the boundary of the district, and the district shall include all winegrape growing acreage within the outside boundary.

6293.4. (a) Upon the presentation and filing of a petition, the board of supervisors shall refer the petition to the county agricultural commissioner for the preparation of a register of owners of winegrape growing acreage within the proposed district, and for an investigation and report.

(b) The agricultural commissioner shall create a register of all winegrape growing acreage owners within the proposed district describing the net acreage or size of land devoted to the growing of winegrapes. The commissioner shall file with the register a report and recommendation to the board of supervisors on whether conditions of Pierce's disease, the glassy-winged sharpshooter, or other pest or disease warrant the board of supervisors proceeding with the organization of the district.

6293.5. (a) The board of supervisors shall fix a time and place for the hearing of the petition.

(b) The hearing shall not be less than 20 days, or more than 40 days, after the filing of the petition with the board of supervisors.

(c) The board of supervisors shall order the county clerk to give notice of the time and place fixed for the hearing upon the petition.

6293.6. The notice of hearing shall do all of the following:

(a) State the name of the district and that it is being formed for the control of winegrape pests and diseases pursuant to this chapter.

(b) State the petition is available for inspection at the office of the clerk of the board of supervisors.

(c) Designate the boundaries of the proposed district in substantially the same way that they are described in the petition.

(d) State the time and place for the hearing.

(e) State that at the hearing protests will be considered by the board of supervisors.

(f) State that requests in writing for the exclusion of lands from, or the inclusion of lands in, the proposed district, will be heard and considered by the board of supervisors.

6293.7. Notice of the hearing shall be given by publication in a newspaper of general circulation published and circulated in the district. Notice of the hearing shall also be given to all winegrape growing acreage owners within the proposed district.

6293.8. The notice shall be published once a week for two successive weeks prior to the date set for the hearing.

6293.9. At the hearing, the report of the county agricultural commissioner shall be received by the board of supervisors. Protests may be made orally or in writing by any person interested in the formation of the proposed district. Any protest that pertains to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities and defects to which objection is made. All written protests shall be filed with the clerk of the board of supervisors on or before the time fixed for the final hearing. The hearing may be continued from time to time, not to exceed 60 days.

6293.10. At the hearing, any owner of winegrape growing acreage in the proposed district may present to the board of supervisors a request for the exclusion of that land or any part of that land from the proposed district upon a showing that the land or part of that land will not be benefited by the activities of the proposed district. Factors that the board of supervisors may consider in its determination to exclude shall include an affidavit from the landowner stating that the land is not planted to winegrapes and will not be so planted in the foreseeable future. However, should the excluded land be planted to winegrapes, the landowner shall be required to inform the district, in writing, within 30

days of planting. Any owner of winegrape acreage outside the proposed district may present to the board of supervisors a request in writing for inclusion of that land in the proposed district.

6293.11. If the board of supervisors determines that the petition does not comply with the requirements of law, the matter may be dismissed without prejudice to present a new petition covering the same matter. A finding by the board of supervisors in favor of the sufficiency of the petition and notice is final and conclusive against all persons except the state in a proceeding brought by the Attorney General within one year of the date of the making of the order establishing and describing the boundaries of the district.

6293.12. (a) If the board of supervisors determines that the project is feasible and in the interest of the winegrape growers of the county, the board of supervisors shall, by order entered in its minutes, declare the district duly organized under the name designated in the petition for the formation of the district.

(b) The order shall describe the territory included in the district and, if the board of supervisors does not exclude or include land pursuant to Section 6293.13, it is a sufficient description of the territory to describe the boundaries in substantially the same way as they are described in the petition.

(c) A copy of the order duly certified by the clerk of the board of supervisors shall be filed for record in the office of the county recorder of the county in which the district is situated.

6293.13. (a) In determining the boundaries of the district, the board of supervisors shall exclude from the district any winegrape growing acreage that it finds will not be benefited by the proposed project, and it may include in the district any winegrape growing acreage that it finds will be benefited if it also finds it will be in the interest of the district to include that winegrape growing acreage. The inclusion may be upon application of the owner or, without the owner's application, upon giving the owner notice of the proposed inclusion and an opportunity for a hearing on the inclusion.

(b) Notice of inclusion shall be mailed, postage prepaid, by the clerk of the board of supervisors, to the address of the owner of the winegrape growing acreage, as shown by the last equalized county assessment roll, and to any person that has filed with the clerk that person's name and address and description of winegrape growing acreage in which he or she has either a legal or equitable interest. The notice shall describe the winegrape growing acreage proposed to be included, and shall state the time and place at which objections to the inclusion will be heard.

Article 3. Organization of Districts

6294. Upon the adoption of the order of organization, the board of supervisors shall immediately appoint a board of directors of five members to administer the affairs of the district.

6294.1. In order to be eligible to be a director of the district, a person shall be a citizen of the United States and of this state, and an owner of lands included in the district that are devoted, in whole or in part, to the growing of winegrapes. The district board members shall represent geographically diverse areas in the county.

6294.2. Upon his or her appointment, each director shall, in the manner provided by law, subscribe the oath of office and file the oath with the county clerk.

6294.3. (a) From and after the filing for record of the order of the board of supervisors declaring the district organized, and the appointment and qualification of its first board of directors, the organization of the district is complete. The district shall operate for a period of five years from the date of its organization and shall cease to exist after five years, unless the district is reauthorized and approved by the board of supervisors.

(b) The district board of directors shall hold a public hearing six months prior to the termination of its initial organization or last reauthorization to determine whether the conditions of Pierce's disease, the glassy-winged sharpshooter or other pest or disease determined pursuant to Section 6293.4 warrant the reauthorization of the district for an additional five years. The notice of hearing shall state the name of the district and that consideration is being given to reauthorizing the district for up to an additional five years, the boundaries of the district, and the time and place for the hearing. Notice of the hearing shall be given as provided in Sections 6293.7 and 6293.8. The district board of directors shall submit the record of the hearing and its recommendation to the board of supervisors within 90 days of the hearing.

(c) Following its receipt of the recommendation of the district board of directors, the board of supervisors shall approve or reject the recommendation. If the recommendation is rejected, the board of supervisors shall return the report accompanied by its reasons for the rejection to the board of directors within 30 days of receipt. The district board of directors may thereafter address the reasons for rejection by the board of supervisors and submit an amended report and new recommendations for reauthorization for approval or rejection by the board of supervisors, unless the district has ceased to exist pursuant to subdivision (a).

6294.4. (a) Immediately after the organization of the district, the directors shall meet and organize as a board and shall elect a chairperson, vice chairperson and secretary from among their own number.

(b) The chairperson shall call and preside at all meetings of the district board, sign all warrants drawn on the county treasurer, and all contracts and other documents, and the minutes of all meetings at which the chairperson is present. In case of the chairperson's absence from a meeting, the vice chairperson shall act as chairperson pro tempore. The vice chairperson may sign warrants in place of the chairperson if the chairperson is absent from a meeting or unavailable. The secretary shall give notice of and keep the minutes of all meetings and prepare and have custody of all records and papers, and have custody of the seal of the district. The secretary shall attest all warrants drawn on the county treasury, all contracts and other documents, and shall sign the minutes of all meetings at which he or she is present. The secretary shall prepare the annual reports and any other reports required by the district board and shall prepare all notices and all calls for bids.

6294.5. The members of the district board shall serve for terms of one year, or for a longer term as determined by the board of supervisors, and until the appointment and qualification of their successors.

6294.6. Upon the expiration of the term of any member of the district board, the board of supervisors shall appoint the successor. Vacancies shall be filled by the board of supervisors for the unexpired term.

6294.7. The members of the district board shall not receive any compensation for their services, but may be reimbursed for their actual and necessary expenses, when claims for those expenses have been approved by the district board.

Article 4. Powers and Duties of the District

6295. The district may do all of the following:

(a) Sue and be sued in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(b) Adopt a seal and alter it at pleasure.

(c) Take by grant, purchase, gift, devise, lease, or otherwise, and hold, use and enjoy, and lease, or otherwise dispose of, real and personal property of every kind and description within or without the district necessary to the full and convenient exercise of its powers.

(d) Cause assessments to be levied, as provided in Article 5 (commencing with Section 6296), to pay any obligation of the district and to accomplish the purposes of the district in the manner provided in this chapter.

(e) Make contracts, and employ, except as otherwise provided in this chapter, all persons, firms, and corporations necessary to carry out the purposes and the powers of the district, and at any salary, wage, or other compensation as the district board of directors shall determine.

(f) Respond to the effects and spread of Pierce's disease, the glassy-winged sharpshooter, and other winegrape plant pests and diseases and collect and disseminate to winegrape growers in the district all relevant information and scientific studies concerning the pest or pests or diseases, as well as to chart and determine the extent and location of any infestations.

(g) With reasonable advance notice in writing to the landowner, as determined by the district, enter into or upon any land included within the boundaries of the district for the purpose of inspecting the winegrape plants and any other host plants and fruit growing on them.

(h) Perform any and all acts, either within or outside the district, necessary or proper to fully and completely carry out the purposes for which the district is organized.

(i) The district's administrative costs are to be limited to 5 percent of the annual assessment revenues.

6295.1. Every district formed pursuant to this chapter has all of the powers prescribed by Section 6295 and other provisions of this chapter, regardless of any language in the petition for formation for any district or in any of the proceedings leading to the formation that would otherwise limit the power of the district.

6295.2. The county agricultural commissioner of the county in which the district is located shall, in consultation with the district board, assist the district to the extent possible in all activities undertaken by the district for the control of Pierce's disease, the glassy-winged sharpshooter, or any other winegrape plant pests or diseases.

6295.3. The district board shall, immediately after its appointment and after public hearing, formulate an effective plan and adopt a budget of expenditures for the forthcoming fiscal year. At a public hearing on the plan and the budget, any owner of winegrape growing acreage included in the district may make written or oral protest against the budget or any item in it. The plan and the budget, as thereafter approved by the district board, shall be the plan and the budget of the district for the forthcoming fiscal year.

6295.4. There may be added to the budget for the first fiscal year of the operation of the district an amount not to exceed 20 percent of the total amount of the budget to cover the preliminary expenses of the district, including, but not limited to, the costs of formation, before the beginning of the first fiscal year.

6295.5. For each fiscal year subsequent to the first year of operation of the district, the district board shall adopt the final budget therefor in

the same manner and at the same time that the budget for the first fiscal year was adopted.

6295.6. The board of supervisors may charge the district for actual costs incurred by the county in connection with the proceedings for the formation of the district, and the district shall reimburse the county from assessments levied for those expenses.

Article 5. Levy of Assessments for District Purposes

6296. The county assessor, in making the annual assessment of property included in the district each and every year after the organization of the district, shall identify any parcel of real property with one acre, or more, of winegrape plants.

6296.1. Whenever acreage within the district is planted with winegrape plants in such a fashion as to qualify as winegrape growing acreage, the acreage is subject to assessment as provided in this article.

6296.2. (a) After the district has been formed, an owner of winegrape growing acreage in the district may present to the district board a request in writing for the exclusion of that land or any part of the land from the district upon a showing that the land or part of the land will not be benefited by the activities of the district. Factors that the district board may consider in its determination for exclusion shall include an affidavit from the owner that the plants have been removed from the land and will not be replanted within the foreseeable future. However, should the excluded land be planted to winegrapes, the landowner shall be required to inform the district, in writing, within 30 days of planting.

(b) After receipt of the request, the district board shall cause an investigation of the parcel of land to be made and, if the district board determines that the land or part of the land will not be benefited by the activities of the district, the district board shall exclude the winegrape acreage from the district and immediately certify this fact to the county assessor and the county auditor or tax collector.

(c) Any owner of winegrape acreage outside of, or otherwise not included in, the district may present to the district board a request in writing for inclusion of the land in the district.

6296.3. (a) The district board shall, on or before the first Monday in April of each year, file with the board of supervisors a budget that sets forth all estimated expenditures of the district for the fiscal year commencing on the first day of July. A copy of the budget shall also, at the same time, be filed with the auditor of the county. The board of supervisors shall cause to be prepared and filed with the clerk of the board of supervisors a written report that contains all of the following information:

(1) A description of each parcel of property proposed to be subject to the assessment.

(2) The amount of the assessment of each parcel for the initial fiscal year.

(3) The maximum amount of the assessment that may be levied for each parcel during any fiscal year.

(4) The duration of the assessment.

(5) The basis of the assessment.

(6) The schedule of the assessment.

(7) A description specifying the requirements for written and oral protest, and the protest threshold necessary for requiring abandonment of the proposed assessment pursuant to Section 6299.

(b) The board of supervisors may, by ordinance or by resolution, adopted after complying with the notice, protest, and hearing procedures in Article 4.6 (commencing with Section 53750) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, and upon approval by two-thirds of the benefiting vineyard property owners, determine and levy an assessment for winegrape pest and disease control activities for any of the following purposes:

(1) Responding to, managing, and controlling the effects of the spread of Pierce's disease, the glassy-winged sharpshooter, and any other pests that attack winegrape plants.

(2) Collecting and disseminating to winegrape producers in the district all relevant information and scientific studies concerning the pest, or pests, and winegrape diseases.

(3) Charting and determining the extent and location of any infestations.

(c) The annual assessment shall not exceed twenty dollars ($20) per planted acre.

(d) (1) The district board may establish zones or areas of benefit within the district, and may restrict the imposition of assessments to areas lying within one or more of the zones or areas of benefit established within the district.

(2) The assessment shall be levied on each parcel planted with winegrape plants in such a fashion as to qualify as winegrape growing acreage within the boundaries of the district, zone, or area of benefit.

(e) In addition, the mailed notice shall include the name of the district, the return address of the sender, the amount of the assessment for the initial fiscal year, the maximum amount of the assessment that may be levied during any fiscal year and the name and telephone number of the person designated by the board of supervisors to answer inquiries regarding the protest proceedings.

6296.5. The assessment so levied shall be computed and entered upon the assessment roll by the county auditor, and if the supervisors fail

to levy the assessment as required, the auditor shall do so. The assessment shall be collected at the same time, and in the same manner as, and together with and not separate from, general county taxes, and when collected shall be paid into the county treasury for the use of the district.

6296.6. The general provisions of the laws of this state, prescribing the manner of levying and collecting county taxes and the duties of the several county officers with respect to levying and collecting county taxes, are, so far as they are applicable and not in conflict with the specific provisions of this article, hereby adopted and made a part of this article. The several county officers thus referred to shall be liable upon their several official bonds for the faithful discharge of the duties imposed upon them by this chapter.

6296.7. The revenue from the assessments imposed pursuant to this chapter by the district are trust funds and shall be encumbered only for the purposes for which the district is formed and for the benefit of the property assessed. The district shall expend the minimum amount necessary for overhead and other administrative costs. No district funds shall be donated, loaned, or transferred to any other local agency or to the State of California for any purpose, except for the implementation of the duties of the district, set forth under this chapter, as determined necessary by the district board.

6296.8. The county treasury shall be the repository of all the moneys of the district. The county treasurer shall receive and receipt for all those moneys, and place the same to the credit of the district. The county treasurer shall be responsible upon his or her official bond for the safekeeping and disbursement, in the manner provided in this article, of all moneys of the district so held.

6296.9. (a) The county treasurer shall pay out money of the district only upon warrants of the county auditor drawn upon the order of the board of directors of the district signed by the chairperson or vice chairperson and attested to by the secretary. The county treasurer, with the approval of the board of supervisors, shall pay out the money of the district upon one master warrant of the county auditor drawn upon the order of the board of directors of the district and signed by the chairperson or vice chairperson and attested to by the secretary, to meet the district's expenses, including salaries, at such intervals as is approved by the board of supervisors.

(b) The county treasurer shall report, in writing, on the first day of July, October, January, and March of each year, to the district board of directors, the amount of money the treasurer then holds for the district, the amount of receipts since the last report, and the amounts paid out. Each report shall be verified and filed with the secretary of the district to whom it is addressed.

Article 6. Inclusion of Lands

6297. Lands devoted exclusively to the growing of winegrapes within a tract of land outside the district, but in the county in which the district is located, may be annexed to the district in the same manner provided in this chapter for the formation of the district.

Article 7. Consolidation

6298. Any two or more districts organized or existing under this chapter may be consolidated, whether or not the boundaries are coterminous.

Article 8. Dissolution of Districts

6299. Upon the filing of a petition with the board of supervisors, signed by 50 percent or more of the owners of 65 percent or more of the affected land, or signed by 65 percent or more of the owners of 50 percent or more of the affected land, requesting the dissolution of the district, the board of supervisors shall set a time and place for hearing on the petition, which shall not be less than 20 days, or more than 40 days, after the filing of the petition. Immediately following the hearing, the board of supervisors shall vote on the petition for dissolution. A majority vote supporting the petition by the supervisors will result in dissolution of the district.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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 protect the winegrape industry in Napa County from the immediate threat of Pierce's disease and other pests and diseases it is necessary for this act to take effect immediately as an urgency statute.

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CHAPTER 443

An act to add and repeal Section 66903.5 of the Education Code, relating to community colleges, and making an appropriation therefor.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

I am signing SB 664, legislation requires the California Postsecondary Education Commission (CPEC) to conduct a review and analysis of admission procedures and attrition rates for two-year associate degree nursing programs.

Nursing programs in the California Community Colleges are currently impacted and the system should take steps to ensure that students admitted into the program are academically prepared. This study should help identify strategies to maximize the number of nursing students that can graduate and help meet California's high demand for nurses. However, due to our rapidly declining economy, I am vetoing the appropriation of $130,000 and requesting that CPEC conduct the study or contract out within existing resources.

GRAY DAVIS, Governor

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

SECTION 1. Section 66903.5 is added to the Education Code, to read:

66903.5. (a) The commission shall conduct, or contract to conduct, a review and analysis of California community college districts' admission procedures and attrition rates for their two-year associate degree nursing programs. The review and analysis shall include, but not necessarily be limited to, information regarding the admission procedures and attrition rates for the Los Angeles County College of Nursing and Allied Health and other relevant nursing programs, to the extent that information is available. The commission shall submit findings of the review and analysis, along with relevant recommendations, to the Governor and the Legislature on or before January 10, 2003.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends that date.

SEC. 2. The sum of one hundred thirty thousand dollars ($130,000) is hereby appropriated from the General Fund to the California Postsecondary Education Commission for purposes of Section 66903.5 of the Education Code.

CHAPTER 444

An act to amend Sections 103850 and 103885 of the Health and Safety Code, relating to public health information, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 103850 of the Health and Safety Code is amended to read:

103850. (a) All information collected pursuant to this chapter shall be confidential and shall be used solely for the purposes provided in this chapter. For purposes of this chapter, this information shall be referred to as ''confidential information.'' Access to confidential information shall be limited to authorized program staff, and persons with a valid scientific interest, who meet qualifications as determined by the director, who are engaged in demographic, epidemiological or other similar studies related to health, and who agree, in writing, to maintain confidentiality.

(b) The department shall maintain an accurate record of all persons who are given access to confidential information. The record shall include: the name of the person authorizing access; name, title, address, and organizational affiliation of persons given access; dates of access; and the specific purpose for which information is to be used. The record of access shall be open to public inspection during normal operating hours of the state department.

(c) All research proposed to be conducted by persons other than program staff, using confidential information in the system, shall first be reviewed and approved by the director and the State Committee for the Protection of Human Subjects. Satisfaction of the terms of the director's rules for data access shall be deemed to establish a valid scientific interest for purposes of subdivision (a), entitling the researcher to review records collected pursuant to Section 103830 and to contact case subjects and controls. Before confidential information is disclosed pursuant to this section to any other person, agency, or organization, the requesting entity shall demonstrate to the department that the entity has established the procedures and ability to maintain the confidentiality of the information.

(d) Notwithstanding any other provision of law, any disclosure authorized by this section shall include only the information necessary for the stated purpose of the requested disclosure, and shall be made only

upon written agreement that the information will be kept confidential, used for the approved purpose, and not be further disclosed.

(e) The furnishing of confidential information to the department or its authorized representative in accordance with this section shall not expose any person, agency, or entity furnishing the information to liability, and shall not be considered a waiver of any privilege or a violation of a confidential relationship.

(f) Whenever program staff, pursuing program objectives, deems it necessary to contact case subjects and controls, program staff shall submit a protocol describing the research to the director and to the State Committee for the Protection of Human Subjects. Once a protocol is approved by that committee, program staff shall be deemed to have established a bona fide research purpose, and shall be entitled to complete the approved project and contact case subjects and controls without securing any additional approvals or waivers from any entity.

(g) Notwithstanding any other provision of law, no part of the confidential information shall be available for subpoena, nor shall it be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding, nor shall this information be deemed admissible as evidence in any civil, criminal, administrative, or other tribunal or court for any reason. Nothing in this section shall prohibit the publishing by the department of reports and statistical compilations relating to birth defects, stillbirth, or miscarriage that do not in any way identify individual cases or individual sources of information.

(h) Any person who, in violation of a written agreement to maintain confidentiality, discloses any information provided pursuant to this section, or who uses information provided pursuant to this section in a manner other than as approved pursuant to this section may be denied further access to any confidential information maintained by the department. That person shall also be subject to a civil penalty of five hundred dollars ($500). The penalty provided in this section shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of the department or any person.

(i) Notwithstanding the restrictions in this section, an individual to whom the information pertains shall have access to his or her own information in accordance with Chapter 1 (commencing with Section 1798) of Title 1.8 of the Civil Code.

SEC. 2. Section 103885 of the Health and Safety Code is amended to read:

103885. (a) The director shall establish a statewide system for the collection of information determining the incidence of cancer, using population-based cancer registries modeled after the Cancer Surveillance Program of Orange County. As of the effective date of this

section the director shall begin phasing in the statewide cancer reporting system. By July 1, 1988, all county or regional registries shall be implemented or initiated. By July 1, 1990, the statewide cancer reporting system shall be fully operational. Within 60 days of the effective date of this section, the director shall submit an implementation and funding schedule to the Legislature.

(b) The department may designate any demographic parts of the state as regional cancer incidence reporting areas and may establish regional cancer registries, with the responsibility and authority to carry out the intent of this section in designated areas. Designated regional registries shall provide, on a timely basis, cancer incidence data as designated by the state department to the department. The department may contract with an agency, including, but not limited to, a health systems agency, single county health department, multicounty health department grouping, or nonprofit professional association, representing a designated cancer reporting region for the purposes of collecting and collating cancer incidence data.

(c) The director shall designate cancer as a disease required to be reported in the state or any demographic parts of the state in which cancer information is collected under this section. All cancers diagnosed or treated in the reporting area shall thereafter be reported to the representative of the department authorized to compile the cancer data, or any individual, agency, or organization designated to cooperate with that representative.

(d) (1) Any hospital or other facility providing therapy to cancer patients within an area designated as a cancer reporting area shall report each case of cancer to the department or the authorized representative of the department in a format prescribed by the department. If the hospital or other facility fails to report in a format prescribed by the department, the department's authorized representative may access the information from the hospital or the facility and report it in the appropriate format. In these cases, the hospital or other health facility shall reimburse the state department or the authorized representative for its cost to access and report the information.

(2) Any physician and surgeon, dentist, podiatrist, or other health care practitioner diagnosing or providing treatment for cancer patients shall report each cancer case to the department or the authorized representative of the department except for those cases directly referred to a treatment facility or those previously admitted to a treatment facility for diagnosis or treatment of that instance of cancer.

(e) Any hospital or other facility that is required to reimburse the department or its authorized representative for the cost to access and report the information pursuant to subdivision (d) shall provide payment to the department or its authorized representative within 60 days of the

date this payment is demanded. In the event any hospital or other facility fails to make the payment to the department or its authorized representative within 60 days of the date the payment is demanded, the department or its authorized representative may, at its discretion, assess a late fee not to exceed $1^1/_2$ percent per month of the outstanding balance. Further, in the event that the department or its authorized representative takes a legal action to recover its costs and any associated fees, and the department or its authorized representative receives a judgment in its favor, the hospital or other facility shall also reimburse the department or its authorized representative for any additional costs it incurred to pursue the legal action. Late fees and payments made to the department by hospitals or other facilities pursuant to this subdivision shall be considered as reimbursements of the additional costs incurred by the department.

(f) All physicians and surgeons, hospitals, outpatient clinics, nursing homes and all other facilities, individuals or agencies providing diagnostic or treatment services to patients with cancer shall grant to the department or the authorized representative access to all records that would identify cases of cancer or would establish characteristics of the cancer, treatment of the cancer, or medical status of any identified cancer patient. Willful failure to grant access to those records shall be punishable by a fine of up to five hundred dollars ($500) each day access is refused. Any fines collected pursuant to this subdivision shall be deposited in the General Fund.

(g) (1) Except as otherwise provided in this section, all information collected pursuant to this section shall be confidential. For purposes of this section, this information shall be referred to as ''confidential information.''

(2) The department and any regional cancer registry designated by the department shall use the information to determine the sources of malignant neoplasms and evaluate measures designed to eliminate, alleviate, or ameliorate their effect.

(3) Persons with a valid scientific interest who are engaged in demographic, epidemiological, or other similar studies related to health who meet qualifications as determined by the department, and who agree, in writing, to maintain confidentiality, may be authorized access to confidential information.

(4) The department and any regional cancer registry designated by the department may enter into agreements to furnish confidential information to other states' cancer registries, federal cancer control agencies, local health officers, or health researchers for the purposes of determining the sources of cancer and evaluating measures designed to eliminate, alleviate, or ameliorate their effect. Before confidential information is disclosed to those agencies, officers, researchers, or

out-of-state registries, the requesting entity shall agree in writing to maintain the confidentiality of the information, and in the case of researchers, shall also do both of the following:

(A) Obtain approval of their committee for the protection of human subjects established in accordance with Part 46 (commencing with Section 46.101) of Title 45 of the Code of Federal Regulations.

(B) Provide documentation to the department that demonstrates to the department's satisfaction that the entity has established the procedures and ability to maintain the confidentiality of the information.

(5) Notwithstanding any other provision of law, any disclosure authorized by this section shall include only the information necessary for the stated purpose of the requested disclosure, used for the approved purpose, and not be further disclosed.

(6) The furnishing of confidential information to the department or its authorized representative in accordance with this section shall not expose any person, agency, or entity furnishing information to liability, and shall not be considered a waiver of any privilege or a violation of a confidential relationship.

(7) The department shall maintain an accurate record of all persons who are given access to confidential information. The record shall include: the name of the person authorizing access; name, title, address, and organizational affiliation of persons given access; dates of access; and the specific purpose for which information is to be used. The record of access shall be open to public inspection during normal operating hours of the department.

(8) Notwithstanding any other provision of law, no part of the confidential information shall be available for subpoena, nor shall it be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding, nor shall this information be deemed admissible as evidence in any civil, criminal, administrative, or other tribunal or court for any reason.

(9) Nothing in this subdivision shall prohibit the publication by the department of reports and statistical compilations that do not in any way identify individual cases or individual sources of information.

(10) Notwithstanding the restrictions in this subdivision, the individual to whom the information pertains shall have access to his or her own information in accordance with Chapter 1 (commencing with Section 1798) of Title 1.8 of the Civil Code.

(h) For the purpose of this section, ''cancer'' means either of the following:

(1) All malignant neoplasms, regardless of the tissue of origin, including malignant lymphoma, Hodgkins disease, and leukemia, but excluding basal cell and squamous cell carcinoma of the skin.

(2) All primary intracranial and central nervous system (CNS) tumors occurring in the following sites, irrespective of histologic type: brain, meninges, spinal cord, caudae equina, cranial nerves and other parts of the CNS, pituitary gland, pineal gland, and craniopharyngeal duct.

(i) Nothing in this section shall preempt the authority of facilities or individuals providing diagnostic or treatment services to patients with cancer to maintain their own facility-based cancer registries.

(j) It is the intent of the Legislature that the department, in establishing a system pursuant to this section, maximize the use of available federal funds.

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 improve the health and well-being of the citizens of California, their confidential health data maintained by the state for public health surveillance and research purposes only must be protected from misuse and disclosure through subpoena and other court proceedings at the earliest possible time. It is therefore necessary that this act take effect immediately.

CHAPTER 445

An act to amend, repeal, and add Section 361.4 of the Welfare and Institutions Code, relating to dependent children, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 361.4 of the Welfare and Institutions Code is amended 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 records check to be conducted by an appropriate governmental agency through the California Law

Enforcement Telecommunications System pursuant to Section 16504.5. The criminal records 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 records 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. Within five judicial days following the criminal records check conducted through the California Law Enforcement Telecommunications System, the social worker shall ensure that a fingerprint clearance check of the relative and any other person whose criminal record was obtained pursuant to this subdivision is initiated to ensure the accuracy of the criminal records check conducted through the California Law Enforcement Telecommunications System and shall review the results of any criminal records check to assess the safety of the home.

(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) (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, unless a criminal records exemption has been granted by the county, based on substantial and convincing evidence to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a risk of harm to the child, pursuant to paragraph (3) of this subdivision.

(3) (A) A county may issue a criminal records exemption only if that county has been granted permission by the Director of Social Services to issue criminal records exemptions. The county may file a request with the Director of Social Services seeking permission for the county to establish a procedure to evaluate and grant appropriate individual criminal records exemptions for persons described in subdivision (b). The director shall grant or deny the county's request within 14 days of

receipt. The county shall evaluate individual criminal records in accordance with the standards and limitations set forth in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code, and in no event shall the county place a child in the home of a person who is ineligible for an exemption under that provision.

(B) The department shall monitor county implementation of the authority to grant an exemption under this paragraph to ensure that the county evaluates individual criminal records and allows or disallows placements according to the standards set forth in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code.

(4) The department shall conduct an evaluation of the implementation of paragraph (3) through random sampling of county exemption decisions.

(5) The State Department of Social Services shall not evaluate or grant criminal record exemption requests for persons described in subdivision (b), unless the exemption request is made by an Indian tribe pursuant to subdivision (f).

(6) If a county has not requested, or has not been granted, permission by the State Department of Social Services to establish a procedure to evaluate and grant criminal records exemptions, the county may not place a child into the home of a person described in subdivision (b) if any person residing in the home has been convicted of a crime other than a minor traffic violation, except as provided in subdivision (f).

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

(f) Upon request from an Indian tribe, the State Department of Social Services shall evaluate an exemption request, if needed, to allow placement into an Indian home that the tribe has designated for placement under the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) that would otherwise be barred under this section. However, if the county with jurisdiction over the child that is the subject of the tribe's request has established an approved procedure pursuant to paragraph (3) of subdivision (d), the tribe may request that the county evaluate the exemption request. Once a tribe has elected to have the exemption request reviewed by either the State Department of Social Services or the county, the exemption decision may only be made by that entity. Nothing in this subdivision limits the duty of a county social worker to evaluate the home for placement or to gather information needed to evaluate an exemption request.

(g) 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. 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 records check to be conducted by an appropriate governmental agency through the California Law Enforcement Telecommunications System pursuant to Section 16504.5. The criminal records 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 records 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. Within five judicial days following the criminal records check conducted through the California Law Enforcement Telecommunications System, the social worker shall ensure that a fingerprint clearance check of the relative and any other person whose criminal record was obtained pursuant to this subdivision is initiated to ensure the accuracy of the criminal records check conducted through the California Law Enforcement Telecommunications System and shall review the results of any criminal records check to assess the safety of the home.

(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) (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 may not be placed in the home.

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

(f) This section shall become operative on January 1, 2005.

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 timely implement this act in a manner that will allow expeditious placements of foster children in the homes of relatives, it is necessary that this act take effect immediately.

CHAPTER 446

An act to add Sections 31408 and 31409 to the Public Resources Code, relating to coastal resources.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

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

(1) The California Coastal Trail, which has been designated a Millennium Trail by the Governor of California, should be completed in a timely manner.

(2) The California Coastal Trail is a trail that, to the extent feasible, should be constructed along the state's coastline from the Oregon border to the border with Mexico.

(3) The California Coastal Trail should be constructed in a manner that is consistent with the protection of coastal resources.

(b) The California Coastal Trail shall be developed in a manner that demonstrates respect for property rights and the proximity of the trail to residential uses, and that evidences consideration for the protection of the privacy of adjacent property owners.

SEC. 2. Section 31408 is added to the Public Resources Code, to read:

31408. (a) The conservancy shall, in consultation with the Department of Parks and Recreation, and the California Coastal Commission, coordinate the development of the California Coastal Trail.

(b) To the extent feasible, and consistent with their individual mandates, each agency, board, department, or commission of the state with property interests or regulatory authority in coastal areas shall cooperate with the conservancy with respect to planning and making lands available for completion of the trail, including constructing trail links, placing signs and managing the trail.

SEC. 3. Section 31409 is added to the Public Resources Code, to read:

31409. Consistent with the conservancy's authority under this chapter to develop a system of public accessways to, and along, the state's coastline, the conservancy may award grants and provide assistance to public agencies and nonprofit organizations to establish and expand those inland trail systems that may be linked to the California Coastal Trail.

SEC. 4. (a) The conservancy shall, not later than January 31, 2003, in consultation with the California Coastal Commission, the California Conservation Corps, and the Department of Parks and Recreation, complete a plan for the development of the California Coastal Trail that includes all of the following elements:

(1) Determination of a primary hiking route for the trail, including interim and permanent trail alignments where possible.

(2) Description of lands now under public or conservation ownership on which the trail is, or may be, constructed.

(3) A designation of various alternative routes for the trail, where necessary, that would encourage broad support and use of the trail, while protecting coastal resources and reducing conflicts among various users.

(4) A logo and signing program for the trail.

(5) An estimate of the costs for acquisition and construction of missing trail segments.

(6) A description of areas where the trail should connect to inland trail routes, especially where those connections can be utilized by underserved communities as an alternative means of accessing the coast. The plan shall include an estimate of the support and capital outlay costs for completing the trail by January 31, 2008.

(b) Not later than January 31, 2003, the conservancy shall submit to the Legislature a copy of the plan required to be completed pursuant to subdivision (a).

SEC. 5. This act shall be implemented only during those fiscal years for which funding is provided for that purpose in the annual Budget Act.

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CHAPTER 447

An act to amend Section 2772 of the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 2772 of the Public Utilities Code, as amended by Section 1 of Chapter 2 of the Statutes of 2001, Second Extraordinary Session, is amended to read:

2772. In establishing the priorities pursuant to Section 2771, the commission shall include, but not be limited to, a consideration of all the following:

(a) A determination of the customers and uses of electricity and gas, in descending order of priority, that provide the most important public benefits and serve the greatest public need.

(b) A determination of the customers and uses of electricity and gas that are not included under subdivision (a).

(c) A determination of the economic, social, and other effects of a temporary discontinuance in electrical or gas service to the customers or for the uses determined in accordance with subdivision (a) or (b).

(d) A determination of the potential effect of extreme temperatures on the health and safety of residential customers. In making this determination, the commission shall do all of the following:

(1) Consult with appropriate medical experts and review appropriate literature and research.

(2) Consider whether providing priority to customers experiencing extreme temperatures would result in increased outage frequency and duration for remaining customers and its effect on the health and safety of those remaining customers.

(3) To the extent the commission determines it is in the public interest to provide priority to customers that experience extreme temperatures, it shall provide that priority only when temperatures are extreme.

(4) Consider whether alternative measures are appropriate, including, but not limited to, reducing the duration of the outage or imposing the outage earlier or later in the day.

(e) A determination of unacceptable jeopardy or imminent danger to public health and safety that creates substantial likelihood of severe health risk requiring medical attention.

(f) Any curtailment or allocation rules, orders, or regulations issued by any agency of the federal government.

(g) The commission shall also consider the effect of providing a high priority to some customers on those customers who do not receive a high priority.

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 immediately protect the public's health and safety, including, but not limited to, the elderly and disabled residents who reside in the state's 1,200 skilled nursing facilities and who depend on the ability of those facilities to provide quality care in a safe, low-stress environment, and to maintain temperature control, lighting, infection control, and the use of technologically advanced medical equipment, it is necessary that this act take effect immediately.

CHAPTER 448

An act to amend Sections 703.1 and 1773 of, and to amend and repeal Sections 703 and 1760.5 of, the Insurance Code, relating to insurance.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 703 of the Insurance Code, as added by Section 1.5 of Chapter 233 of the Statutes of 1998, is repealed.

SEC. 2. Section 703 of the Insurance Code, as amended by Section 1 of Chapter 233 of the Statutes of 1998, is amended to read:

703. Except when performed by a surplus line broker, the following acts are misdemeanors when done in this state:

(a) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this state.

(b) In any manner advertising a nonadmitted insurer in this state.

(c) In any other manner aiding a nonadmitted insurer to transact insurance business in this state.

In addition to any penalty provided for commission of misdemeanors, a person violating any provision of this section shall forfeit to this state the sum of five hundred dollars ($500), together with one hundred dollars ($100) for each month or fraction thereof during which he or she continues the violation. This section shall not apply to advertising authorized by Section 703.1, subdivision (h) of Section 1760.5, or Section 1773.

SEC. 3. Section 703.1 of the Insurance Code is amended to read:

703.1. (a) Any nonadmitted insurer that is on the list of eligible surplus line insurers issued by the commissioner pursuant to subdivision (f) of Section 1765.1 may advertise in all media, provided that all of the following apply: (1) the insurer's unlicensed status in California is disclosed in type of a size no smaller than any telephone number, address, or fax number appearing in the advertisement or solicitation, (2) the advertisement does not contain any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, that is untrue, deceptive, or misleading, and that is known, or that by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading, (3) the advertisement does not contain any information about the nonadmitted insurer's premiums or rates, and (4) no specific product shall be advertised in a newspaper of general circulation, in a television or radio broadcast, or in a news magazine of general circulation.

(b) Any nonadmitted insurer that is not on the list of eligible surplus line insurers issued by the commissioner pursuant to subdivision (f) of Section 1765.1 may advertise in all media, except for media that are targeted primarily at insureds or prospective insureds residing in California, provided that all of the conditions set forth in subdivision (a) are complied with and the advertisement does not contain any information about the insurer's specific products.

(c) A group of nonadmitted insurers may advertise to the same extent as a nonadmitted insurer, subject to the same requirements set forth in subdivision (a) or (b), as applicable.

(d) An eligible nonadmitted insurer that is a member of a group of insurers may include the name of the group in advertisements that are authorized by this section.

(e) The permission to advertise granted by this section shall not be deemed to authorize an insurer to do business in this state.

SEC. 4. Section 1760.5 of the Insurance Code, as amended by Section 3 of Chapter 233 of the Statutes of 1998, is amended to read:

1760.5. (a) The provisions of this chapter limiting the insurance that may be placed with nonadmitted insurers and requiring any report thereof shall not apply to:

(1) Reinsurance of the liability of an admitted insurer.

(2) Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other shipowner interests; upon goods, wares, merchandise and all other personal property and interests therein, in the course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, drydocks and marine railways, including

insurance of ship repairer's liability, and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.

(3) Aircraft or spacecraft insurance.

(4) Insurance on property or operations of railroads engaged in interstate commerce.

(b) The insurance specified in paragraphs (2), (3), and (4) of subdivision (a) may be placed with a nonadmitted insurer only by and through a special lines' surplus line broker. The license of a special lines' surplus line broker shall be applied for and procured and shall be subject to the same fees for filing on issuance in the same manner as the license of a surplus line broker, except that in lieu of the bond required by Section 1765, there shall be delivered to the commissioner a bond in the form, amounts, and conditions specified in Sections 1663 and 1665 for an insurance broker and only one fee shall be collected from one person for both licenses. The licensee in respect to the business shall be subject to all the provisions of this chapter except Sections 1761, 1763, 1765.1, and 1775.5.

(c) The commissioner may address to any licensed special lines' surplus line broker a written request for full and complete information respecting the financial stability, reputation, and integrity of any nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance specified in paragraphs (2), (3), or (4) of subdivision (a). The licensee so addressed shall promptly furnish in written or printed form so much of the information requested as he or she can produce together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, order in writing the licensee to place no further insurance business on property located or operations conducted within or on the lives of persons who are residents of this state with that nonadmitted insurer on behalf of any person. Any placement with that nonadmitted insurer made by a licensee after receipt of the order is a violation of this chapter. The commissioner may issue an order if he or she finds that a nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance is in an unsound financial condition, is disreputable, or is lacking in integrity. The order shall also include notice of a hearing to be held at a time and place fixed therein, which shall be not less than 20 nor more than 30 days from service of the order upon the licensee.

(d) The commissioner may, in respect to business written or placed under the provisions of this section, require information and reports thereof that the commissioner considers necessary, convenient, or advisable.

(e) Each placing of insurance in violation of this chapter is a misdemeanor.

(f) The commissioner may revoke, suspend, or deny any license granted pursuant to this code in accordance with the procedure provided in Article 13 (commencing with Section 1737) of Chapter 5, or any certificate of authority granted pursuant to this code in accordance with the procedure provided in Section 704 whenever the commissioner finds that the licensee or holder of the certificate has committed a violation of this section.

(g) The premium for insurance placed by or through a special lines' surplus line broker pursuant to this section shall not be subject to the tax imposed upon the broker based upon gross premiums paid for insurance placed under authority conferred by the license.

(h) Special lines' surplus line brokers may advertise and solicit in conformity with Section 1773, except that they are not subject to the limitation that any nonadmitted insurer's name appearing in the advertisements or solicitations must be authorized to accept placements under Section 1765.1.

SEC. 5. Section 1760.5 of the Insurance Code, as added by Section 3.5 of Chapter 233 of the Statutes of 1998, is repealed.

SEC. 6. Section 1773 of the Insurance Code is amended to read:

1773. Surplus line brokers may advertise and solicit using print, electronic media, direct mail, and all other advertising or marketing media. These advertisements and solicitations may include a description of nonadmitted insurance products available through the surplus line broker, and may include the name of any nonadmitted insurer, provided that all of the following apply: (a) the insurer is authorized to accept placements from the surplus line broker pursuant to Section 1765.1, (b) a nonadmitted insurer's name is not used in connection with any nonadmitted insurance product of that insurer, (c) the unlicensed status of the insurer or of the insurance products is disclosed in type of a size no smaller than any telephone number, address, or fax number appearing in the advertisement or solicitation, and (d) the advertisement or solicitation does not contain any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his or her insurance business, that is untrue, deceptive, or misleading, and that is known, or that by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading. If the insurance is available from an eligible nonadmitted insurer that is a member of a group of insurers, advertisements and solicitations in accordance with this section may include the name of the group. A

surplus line broker's advertisements and solicitations shall not include any information about a nonadmitted insurer's premiums or rates.

CHAPTER 449

An act to amend Section 6217.1 of the Public Resources Code, relating to fish, and making an appropriation therefor.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 6217.1 of the Public Resources Code is amended to read:

6217.1. (a) This section and the process described in this section shall govern the expenditure of any funds received by the State of California from the federal government for the purposes of salmon and steelhead trout conservation and restoration and the expenditure of funds authorized for the Coastal Watershed Salmon Habitat Program pursuant to Article 7 (commencing with Section 79104.200) of Chapter 6 of Division 26 of the Water Code.

(b) For purposes of this section, ''project'' means an activity that improves fish habitat in coastal waters utilized by salmon and anadromous trout species.

(c) (1) The Department of Fish and Game shall grant funds from the Salmon and Steelhead Trout Restoration Account in the Resources Trust Fund, as follows:

(A) At least 87.5 percent of the funds shall be allocated as project grants through the existing grant program operated by the fisheries management program of the Department of Fish and Game.

(B) Not more than 12.5 percent of the funds may also be used for project contract administration activities and biological support staff.

(2) (A) A project shall require the consent of a willing landowner, and emphasize the development of coordinated watershed improvement activities.

(B) Projects that restore habitat for salmon and anadromous trout species that are eligible for protection as listed or candidate species under state or federal endangered species acts shall be given top funding priority.

(C) Projects shall be cost-effective and treat causes and not symptoms of fish habitat degradation. Projects may implement instream, riparian,

water quality, water quantity, and watershed prescriptions and shall be designed to restore the structure and function of fish habitat.

(3) Any grant funds allocated to a project that exceed the actual cost of completing the project shall be returned to the Salmon and Steelhead Trout Restoration Account.

(d) (1) A citizen's advisory committee shall be appointed by the Director of Fish and Game, to give advice on the grant program.

(2) The advisory committee shall consist of seven representatives recommended by the California Advisory Committee on Salmon and Steelhead Trout, one representative from the agriculture industry, one representative from the timber industry, one representative of public water agency interests, one academic or research scientist with expertise in anadromous fisheries restoration, and three county supervisors from coastal counties in which anadromous trout exist. The county supervisor members shall be recommended by the California State Association of Counties.

(3) The advisory committee shall provide oversight of, and recommend priorities for, grant funding under this section. In making funding decisions, the Department of Fish and Game shall consider the project selection priorities established by the advisory committee.

(4) Members of any advisory committee established for these purposes shall be reimbursed for travel and incidental expenses related to the performance of their duties under this section. Reimbursement for the advisory committee created pursuant to this section shall be made from the funds designated in subparagraph (B) of paragraph (1) of subdivision (c). Reimbursement for other Department of Fish and Game salmon and steelhead trout advisory committees shall be funded by appropriate sources.

(e) Except as provided in subdivision (f), the money in the Salmon and Steelhead Trout Restoration Account shall be allocated as follows:

(1) Not less than 65 percent of the money shall be used for salmon habitat protection and restoration projects. Of that amount, at least 75 percent shall be used for watershed (upslope) and riparian area protection and restoration activities. These activities may include, but are not limited to, grants to remove substandard culverts, stream crossings, and bridges that constitute barriers to spawning of salmon and steelhead trout and passage of fish. These funds may also be used for the acquisition, from willing sellers, of conservation easements for riparian buffer strips along coastal rivers and streams to protect salmon and steelhead trout habitat or for projects that protect and improve water quality and quantity.

(2) Up to 35 percent of the money shall be allocated for any of the following uses:

(A) Watershed evaluation, assessment, and planning necessary to develop a site-specific and clearly prioritized plan to implement watershed improvements.

(B) Multiyear grants for watershed planning and project monitoring and evaluations.

(C) Watershed organization support and assistance.

(D) Project maintenance and monitoring after the project implementations are complete.

(E) Public school watershed and fishery conservation education projects.

(F) Private sector technical training and education project grants, including teaching private landowners about practical means of improving land and water management practices that, if implemented, will contribute to the protection and restoration of salmon stream habitat; scholarship funding for workshops and conferences that teach restoration techniques; operation of nonprofit restoration technical schools; and production of restoration training and education workshops and conferences.

(G) Fish and wildlife habitat improvements, as defined by Section 4793, and authorized under the California Forestry Incentive Program (CFIP).

(H) The salmon restoration project of the California Conservation Corps.

(I) The state's share of the federal Watershed Stewards Program.

(f) The advisory committee may, in any fiscal year, make a recommendation to the Department of Fish and Game to allocate money from the Salmon and Steelhead Trout Restoration Account for the purposes stated in subdivision (e), but in different percentage requirements than the 65/35 split stated in paragraphs (1) and (2) of that subdivision. Following that recommendation, the Director of Fish and Game may suspend the percentage requirements stated in paragraphs (1) and (2) of subdivision (e) for that fiscal year only.

SEC. 2. The sum of seven million five hundred thousand dollars ($7,500,000) is hereby appropriated from the Coastal Watershed Salmon Habitat Subaccount created by Section 79104.200 of the Water Code, to the Department of Fish and Game, for expenditure in the 2001–02, 2002–03, and 2003–04 fiscal years, for the Mill Creek acquisition project.

CHAPTER 450

An act to amend Section 25201.14 of, and to add Section 25201.16 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 25201.14 of the Health and Safety Code is amended to read:

25201.14. (a) To the extent consistent with the federal act, the following activities are exempt from this article, including the requirements of obtaining a hazardous waste facilities permit or other grant of authorization from the department, if the activity is conducted at the site where the material was generated and the management of the waste meets the requirements of subdivisions (a) to (d), inclusive, of Section 25143.9 and subdivisions (b) and (c) of this section:

(1) Except as provided in subdivision (b), the separation of used oil from water, if all other applicable laws and regulations are met, the used oil is properly transported to an authorized oil recycler, and the separation is accomplished by using one of the following methods:

(A) Gravity separation.

(B) A centrifuge.

(C) Membrane technology.

(D) Heating of the water containing the used oil to a temperature that is not more than 20 degrees Fahrenheit below the flashpoint of the used oil component of the mixture at atmospheric pressure.

(E) The addition of demulsifiers to the water containing the used oil.

(2) (A) The operation of a totally enclosed treatment unit or facility, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, when authorized by regulations adopted by the department pursuant to subparagraph (B).

(B) The department shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code exempting this type of unit or facility from this article to the extent that the department determines that the exemption is consistent with the protection of public health, safety, and the environment.

(b) For purposes of paragraph (1) of subdivision (a), the separation of used oil from water does not include a method using any of the following:

(1) Contaminated groundwater.

(2) Water containing any measurable amount of gasoline or more than 2 percent of a combination of Number 1 or Number 2 diesel fuel.

(3) Used oil and water which contain other constituents that render the material hazardous under the regulations adopted pursuant to Sections 25140 and 25141.

(c) A generator operating pursuant to subdivision (a) shall meet all of the following conditions:

(1) The generator complies with the conditions of subdivisions (d) and (e) of Section 25201.5.

(2) The generator submits a notification that is in compliance with paragraph (7) of subdivision (d) of Section 25201.5 on or before April 1, 1996, or if the generator is commencing the first treatment of waste pursuant to this section, not less than 60 days prior to the date of commencing treatment of that waste pursuant to this section. Upon demonstration of good cause by the generator, the department may allow a shorter time period than 60 days between notification and commencement of hazardous waste treatment pursuant to this section. The generator shall be in compliance with all other notification requirements of subdivision (d) of Section 25201.5.

(3) The generator maintains adequate records to demonstrate that the requirements and conditions of this section are met, including appropriate waste sampling and analysis records, to demonstrate that none of the water and used oil mixtures listed in subdivision (b) are treated pursuant to this section. All records required pursuant to this paragraph and subdivision (d) of Section 25201.5 shall be maintained onsite for a period of at least three years.

(4) Except as provided in Section 25404.5, the generator submits a one-time fee in the amount of one hundred dollars ($100) to the department as part of the notification required by paragraph (2), at the same time that notification is submitted, unless the generator is subject to a fee under a permit-by-rule or a grant of conditional authorization pursuant to Section 25200.3.

(5) (A) If the generator is conducting treatment pursuant to paragraph (1) of subdivision (a), the generator complies with the phase I environmental assessment requirements of Section 25200.14, except for subdivisions (d), (f), and (g) of Section 25200.14. The generator shall not be required to comply with this subparagraph until the department completes an evaluation of the phase I environmental assessment requirement, pursuant to Section 25200.14.1, and until any revisions resulting from that evaluation are implemented by statute or regulation.

(B) A generator conducting treatment pursuant to paragraph (2) of subdivision (a) shall not be required to conduct any site investigations, beyond that required by subparagraph (A), or to initiate remediation

activities until the department adopts regulations specifying the criteria and procedures for corrective action at non-RCRA facilities.

(C) This paragraph does not limit the authority of the department or a unified program agency approved pursuant to Section 25404.1 to issue an order pursuant to Section 25187.1 or to order corrective action pursuant to Section 25187.

SEC. 2. Section 25201.16 is added to the Health and Safety Code, to read:

25201.16. (a) For purposes of this section, the following terms have the following meanings:

(1) ''Aerosol can'' means a container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.

(2) ''Aerosol can processing'' means the puncturing, draining, or crushing of aerosol cans.

(3) ''Destination facility,'' as used in Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations, also includes a facility that treats, except as described in subdivision (d), or disposes of, a hazardous waste aerosol can that is shipped to the facility as a universal waste aerosol can, except destination facility does not include a facility at which universal waste aerosol cans are merely accumulated.

(4) ''Hazardous waste aerosol can'' means an aerosol can that meets the definition of hazardous waste, as defined in Section 25117.

(5) ''Unauthorized release'' means a release to the environment that is in violation of any applicable federal, state, or local law, or any permit or other approval document issued by any federal, state, or local agency.

(6) ''Universal waste aerosol can'' means a hazardous waste aerosol can while it is being managed in accordance with the department's regulations governing the management of universal waste, except as required otherwise in subdivisions (d) to (k), inclusive. Upon receipt of a universal waste aerosol can by a destination facility for purposes of treatment or disposal, the can is no longer a universal waste aerosol can, but continues to be a hazardous waste aerosol can.

(7) With respect to a universal waste aerosol can, the term ''universal waste handler,'' as defined in Section 66273.9 of Title 22 of the California Code of Regulations, does not include either of the following:

(A) A person who treats, except as described in subdivision (h), or disposes of hazardous waste aerosol cans including universal waste aerosol cans.

(B) A person engaged in offsite transportation of hazardous waste aerosol cans, including, but not limited to, universal waste aerosol cans, by air, rail, highway, or water, including a universal waste aerosol can transfer facility.

(b) (1) The requirements of this section apply to any person who manages aerosol cans, except for the following:

(A) Aerosol cans that are not yet wastes pursuant to Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(B) Aerosol cans that do not exhibit a characteristic of a hazardous waste as set forth in Article 3 (commencing with Section 66261.20) of Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations.

(C) Aerosol cans that are empty pursuant to subsection (m) of Section 66261.7 of Title 22 of the California Code of Regulations.

(2) (A) An aerosol can becomes a waste on the date the aerosol can is discarded or is no longer useable. An aerosol can is deemed to be no longer useable when any of the following occurs:

(i) The can is as empty as possible, using standard practices.

(ii) The spray mechanism no longer operates as designed.

(iii) The propellant is spent.

(iv) The product is no longer used.

(B) An unused aerosol can is a waste, for purposes of Section 25124, on the date the owner decides to discard it.

(c) (1) The disposal of any hazardous waste aerosol can is subject to the requirements of this chapter, and to any regulations adopted by the department relating to the disposal of hazardous waste.

(2) Except as otherwise provided in this section, the treatment or storage of any hazardous waste aerosol can is subject to the requirements of this chapter, and any regulations adopted by the department relating to the treatment and storage of hazardous waste.

(d) (1) Except as provided in paragraph (2), a universal waste aerosol can is deemed to be a universal waste for purposes of the department's regulations governing the management of universal wastes.

(2) The exemptions described in Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations for universal waste generated by households and conditionally exempt small quantity waste generators of universal waste do not apply to universal waste aerosol cans.

(e) A universal waste handler shall manage universal waste aerosol cans in a manner that prevents fire, explosion, and the unauthorized release of any universal waste or component of a universal waste to the environment.

(f) Any container used to accumulate or transport universal waste aerosol cans, or the contents removed from a universal waste aerosol can or processing device, unless the contents have been determined to not be hazardous waste, shall meet all of the following requirements:

(1) (A) Except when waste is added or removed or as provided in subparagraph (B), the container shall be closed, structurally sound, and compatible with the contents of the universal waste aerosol can, and shall show no evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(B) The closed container requirement in subparagraph (A) does not apply to a container used to accumulate universal waste aerosol cans prior to processing the cans pursuant to subdivision (h), or prior to shipping the cans offsite, except that the container shall be covered at the end of each workday.

(2) The container shall be placed in a location that has sufficient ventilation to avoid formation of an explosive atmosphere, and shall be designed, built, and maintained to withstand pressures reasonably expected during storage and transportation.

(3) (A) The container shall be placed on or above a floor or other surface that is free of cracks or gaps and is sufficiently impervious and bermed to contain leaks and spills.

(B) Subparagraph (A) does not apply to a container used to accumulate universal waste aerosol cans prior to processing the cans pursuant to subdivision (h) or prior to shipping the cans offsite.

(4) Incompatible materials shall be kept segregated and managed appropriately in separate containers.

(5) A container holding flammable wastes shall be kept at a safe distance from heat and open flames.

(6) A container used to hold universal waste aerosol cans shall be labeled or marked clearly with one of the following phrases: ''Universal Waste-Aerosol Cans'', ''Waste Aerosol Cans'', or ''Used Aerosol Cans''.

(g) A universal waste handler shall accumulate universal waste aerosol cans in accumulation containers that meet the requirements of subdivision (f). The universal waste aerosol cans shall be accumulated in a manner that is sorted by type and compatibility of contents.

(h) A universal waste handler may process a universal waste aerosol can to remove and collect the contents of the universal waste aerosol can, if the universal waste handler meets all of the following requirements:

(1) The handler is not an offsite commercial processor of aerosol cans. For the purposes of this paragraph, a household hazardous waste collection facility, as defined in subdivision (f) of Section 25218.1, is not an offsite commercial processor.

(2) The handler ensures that the universal waste aerosol can is processed in a manner and in equipment designed, maintained, and operated so as to prevent fire, explosion, and the unauthorized release of any universal waste or component of a universal waste to the environment.

(3) The handler ensures that the unit used to process the universal waste aerosol cans is placed on or above a nonearthen floor that is free of cracks or gaps and is sufficiently impervious and bermed to contain leaks and spills.

(4) The handler ensures that the processing operations are performed safely by developing and implementing a written operating procedure detailing the safe processing of universal waste aerosol cans. This procedure shall, at a minimum, include all of the following:

(A) The type of equipment to be used to process the universal waste aerosol cans safely.

(B) Operation and maintenance of the unit.

(C) Segregation of incompatible wastes.

(D) Proper waste management practices, including ensuring that flammable wastes are stored away from heat and open flames.

(E) Waste characterization.

(5) The handler ensures that a spill cleanup kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can.

(6) The handler immediately transfers the contents of the universal waste aerosol can or processing device, if applicable, to a container that meets the requirements of subdivision (f), and characterizes and manages the contents pursuant to subdivision (i).

(7) The handler ensures that the area in which the universal waste aerosol cans are processed is well ventilated.

(8) The handler ensures, through a training program utilizing the written operating procedures developed pursuant to paragraph (4), that each employee is thoroughly familiar with the procedure for sorting and processing universal waste aerosol cans, and proper waste handling and emergency procedures relevant to his or her responsibilities during normal facility operations and emergencies.

(i) A universal waste handler who processes universal waste aerosol cans to remove the contents of the aerosol can, or who generates other waste as a result of the processing of aerosol cans, shall determine whether the contents of the universal waste aerosol can, residues, or other wastes exhibit a characteristic of hazardous waste identified in Article 3 (commencing with Section 66261.20) of Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations.

(1) If the contents of the universal waste aerosol can, residues, or other wastes exhibit a characteristic of hazardous waste, those wastes shall be managed in compliance with all applicable requirements of this chapter and the regulations adopted by the department pursuant to this chapter. The universal waste handler shall be deemed the generator of that hazardous waste and is subject to the requirements of Chapter 12

(commencing with Section 66262.10) of Division 4.5 of Title 22 of the California Code of Regulations.

(2) If the contents of the universal waste aerosol can, residues, or other wastes are not hazardous, the universal waste handler shall manage those wastes in a manner that is in compliance with all applicable federal, state, and local requirements.

(j) (1) A universal waste handler that processes universal waste aerosol cans shall, no later than the date on which the handler first initiates this activity, submit a notification, in person or by certified mail, with return receipt requested, to either of the following:

(A) The CUPA, if the facility is under the jurisdiction of a CUPA.

(B) If the facility is not under the jurisdiction of a CUPA, the notification shall be submitted to the agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(2) Each notification submitted pursuant to this subdivision shall be completed, dated, and signed according to the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, and shall include, but not be limited to, all of the following information:

(A) The name, identification number, site address, mailing address, and telephone number of the handler.

(B) A description of the universal waste aerosol can processing activities, including the type and estimated volumes or quantities of universal waste aerosol cans to be processed monthly, the treatment process or processes, equipment descriptions, and design capacities.

(C) A description of the characteristics and management of any hazardous treatment residuals.

(3) (A) Within 30 days of any change in operation which necessitates modifying any of the information submitted in the notification required pursuant to this subdivision, the handler shall submit an amended notification, in person or by certified mail, with return receipt requested, to one of the following:

(i) The CUPA, if the facility is under the jurisdiction of a CUPA.

(ii) If the facility is not under the jurisdiction of a CUPA, the notification shall be submitted to the agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(B) Each amended notification shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to hazardous waste facilities permit applications.

(k) In addition to the requirements set forth in Article 4 (commencing with Section 66273.50) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations, during transportation, including holding time at a transfer facility, a transporter of universal waste aerosol cans shall comply with the following requirements:

(1) The transporter shall transport and otherwise manage universal waste aerosol cans in a manner that prevents fire, explosion, and the unauthorized release of any universal waste, or component of a universal waste, into the environment.

(2) Universal waste aerosol cans shall be transported and stored in accumulation containers that are clearly marked or labeled for that use and that meet the requirements of subdivision (f).

(*l*) The department may adopt regulations specifying any additional requirement or limitation on the management of hazardous waste aerosol cans that the department determines is necessary to protect human health or safety or the environment.

(m) The development and publication of the notification form specified in subdivision (j) is not subject to the requirements described in Chapter 3.5 (commencing with Section 11340) of Part I of Division 3 of Title 2 of the Government Code.

(n) In addition to the requirements set forth in this section, a hazardous waste aerosol can shall be managed in a manner that meets all requirements established by the United States Environmental Protection Agency.

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.

CHAPTER 451

An act to amend Section 22754 of the Government Code, relating to employee health benefits, and making an appropriation therefor.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. 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) Any officer or employee of a contracting agency as defined in paragraph (3) of subdivision (g) that has elected to become subject to this part, except persons who are determined to be ineligible.

(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, that 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 21547 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) or (3) of subdivision (g) and who receives a retirement allowance from that retirement system, or a surviving family member who receives the retirement allowance in place of the deceased.

(4) Any person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.

(f) ''Family member'' means an employee's or annuitant's spouse and any unmarried child (including an adopted child, a stepchild, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship). The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

(g) ''Contracting agency'' means:

(1) Any contracting agency as defined in Section 20022, any county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), and any special district, school district, county board of education, personnel commission of a school district or a county superintendent of schools.

(2) Any public body or agency of, or within California not covered by the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), that provides a retirement system for its employees funded wholly or in part by public

funds and a trial court as defined in the Trial Court Employment Protections and Governance Act (Chapter 7 (commencing with Section 71600) of Title 8).

(3) The protection and advocacy agency described in subdivision (h) of Section 4900 of the Welfare and Institutions Code, if the agency obtains a written advisory opinion from the United States Department of Labor stating that the organization is an agency or instrumentality of the state or a political subdivision thereof within the meaning of the Chapter 18 (commencing with Section 1001) of Title 29 of the United States Code.

(h) ''Employer'' means the state, any contracting agency employing an employee, and any agency that 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.

CHAPTER 452

An act to amend Section 12554 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 12554 of the Welfare and Institutions Code is amended to read:

12554. (a) Notwithstanding Section 12552, special circumstances shall also include the administration and payment by the department pursuant to this section of a recurring special need allowance to every eligible recipient who has a guide dog, signal dog, or other service dog, to pay for dog food and other costs associated with the dog's care and maintenance.

(b) For purposes of this section, the special need allowance shall be fifty dollars ($50) per month.

(c) The department shall mail an application for the allowance to each recipient of benefits under the federal Social Security Disability Insurance (SSDI) program who is known to the department to have a guide dog, signal dog, or other service dog, or who has requested an application from the department, and who is a legal resident of this state. The application shall include a disclosure of the applicant's resources

and all sources and amounts of the applicant's income. The application shall be upon a standard form prescribed by regulations of the department and containing a written declaration that the affirmation is made under penalty of perjury subject to prosecution as the crime of perjury under the Penal Code. The recipient or, if the recipient is incapable, another person as described in Section 11054 may make the affirmation. In order to establish eligibility pursuant to subdivision (e), the applicant shall also be required to present a proof of income statement from the federal Social Security Administration. The department shall grant the special need allowance upon the basis of the affirmation by mailing a monthly warrant in the amount indicated in subdivision (b) to the recipient.

(d) The county welfare department shall cooperate in assisting the recipient in completing his or her application for the special need allowance authorized by this section.

(e) For purposes of this section, ''eligible recipient'' means any person legally residing in this state who is a recipient of benefits under the federal Social Security Disability Insurance (SSDI) program, provided for pursuant to Title II of the federal Social Security Act (42 U.S.C. Sec. 401, et seq.) and whose income and resources are not in excess of the federal poverty level. For purposes of determining eligibility under this section, income and resources shall be defined in the same manner as those terms are used in determining eligibility for aid under Chapter 3 (commencing with Section 12000).

CHAPTER 453

An act to add and repeal Article 23.4 (commencing with Section 8488.5) of Chapter 2 of Part 6 of the Education Code, relating to before and after school programs.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Article 23.4 (commencing with Section 8488.5) is added to Chapter 2 of Part 6 of the Education Code, to read:

Article 23.4. The Six-to-Six Before and After School Program

8488.5. There is hereby established the Six-to-Six Before and After School Program. The purpose of this program is to create locally driven

and locally funded before and after school enrichment programs that partner schools and communities to provide academic and literacy support and safe, constructive alternatives for youth.

8488.7. (a) The Six-to-Six Before and After School Program shall be established to serve pupils in kindergarten and grades 1 to 9, inclusive, at participating elementary, middle, junior high, and charter schoolsites.

(b) A program may operate on one or multiple schoolsites.

(c) An after school program established pursuant to this article shall consist of the following two components:

(1) An educational and literacy component whereby tutoring or homework assistance is provided in one or more of the following areas: language arts, mathematics, history and social science, or science.

(2) A component whereby educational enrichment, which may include, but need not be limited to, recreation, physical activity, conflict resolution, and drug and alcohol prevention activities, is provided.

(d) Governing agencies for programs established pursuant to this article may include any of the following:

(1) A local education agency, including a charter school.

(2) A city or county in partnership with a community-based organization, with the approval of a local educational agency or agencies.

(e) Cities or counties in partnership with community-based organizations and school districts shall ensure that each of the following requirements is fulfilled, if applicable:

(1) The program documents the commitments of each partner to operate a program on that schoolsite or schoolsites.

(2) The program has been approved by the governing board of the school district and the principal of each schoolsite.

(3) Each partner in the program agrees to share responsibility for the quality of the program.

(4) The program designates the public agency or local education agency partner to act as the fiscal agent. For purposes of this section, ''public agency'' means only a county board of supervisors or, where the city is incorporated or has a charter, a city council.

(5) Programs agree to follow all fiscal reporting and auditing standards required by the city or county.

(6) A formal complaint process is established and posted at each schoolsite.

(7) Priority for funding programs established pursuant to this article shall be given to elementary, middle, and junior high schools with the highest percentage of pupils eligible for free or reduced-cost meals through the school lunch program of the United States Department of Agriculture.

8488.9. Every program established pursuant to this article shall be planned through a collaborative process that includes parents, youth, and representatives of participating schoolsites, governmental agencies, such as city and county parks and recreation departments, community organizations, child care providers, and the private sector.

8489. Every pupil attending a school operating a before and after school program pursuant to this article is eligible to participate in the program, subject to program capacity.

8489.1. (a) (1) Every before and after school program established pursuant to this article shall operate a minimum of three hours a day and at least until 6 p.m. on every regular schoolday. Before school programs hours shall be set according to community need. Every program shall establish a policy regarding reasonable early daily release of pupils from the program.

(2) It is the intent of the Legislature that elementary school pupils participate in the full day of the program every day during which pupils participate and that pupils in middle school or junior high school attend a minimum of nine hours a week and three days a week to accomplish program goals, except when released early in accordance with the early release policy described in paragraph (1) or as reasonably necessary.

(3) In order to develop an age-appropriate after school program for pupils in middle school or junior high school, programs established pursuant to this article may implement a flexible attendance schedule for those pupils. Priority for enrollment of pupils in middle school or junior high school shall be given to pupils who attend daily.

(b) The administrators of a program established pursuant to this article shall have the option of operating during any combination of summer, intersession, or vacation periods.

8489.2. The city or county shall annually review all of the following:

(a) Strength of the educational component.

(b) Quality of the educational enrichment component.

(c) Strength of staff training and development component.

(d) Scope and strength of collaboration, including demonstrated support of the schoolsite principal and staff.

(e) Capacity to facilitate better integration with the regular schoolday and other extended learning opportunities. These opportunities may include arts, recreation, computer use, and other activities to broaden the pupil's learning experience.

(f) Inclusion of a nutritional snack.

(g) Employment of CalWORKs recipients.

(h) Level and type of local funds.

(i) Fiscal accountability.

(j) The health and safety of the participants.

8489.3. The administrator of every program established pursuant to this article shall establish minimum qualifications for each staff position that, at a minimum, ensure that all staff members who directly supervise pupils meet the minimum qualifications for an instructional aide, pursuant to the policies of the school district. The administrator of every program shall ensure that all staff receive training in behavior management, discipline, guidance, conflict resolution, and school-age related training. Every program shall have a full-time site supervisor. Selection of the after school program site supervisors shall be subject to the approval of the schoolsite principal. Full-time site supervisors shall possess a bachelor's degree or have completed at least 15 units of coursework, in any combination, in the subject areas of education, child development, recreation, or a related field. The administrator shall also ensure that the program maintains a pupil-to-staff member ratio of no more than 20 to 1. All program staff and volunteers shall be subject to the health screening and fingerprint clearance requirements in current law and district policy for school personnel and volunteers in the school district.

8489.4. Before and after school programs established pursuant to this article shall report annually to the school district and superintendent of the school district on measures, as determined in conjunction with the school district and the site principal, for academic performance, attendance, and positive behavioral changes. Programs shall provide these annual reports to the Education and Human Services Committees of the Legislature.

8489.6. (a) Programs established pursuant to this article shall not be required to comply with the requirements of other provisions of this chapter or requirements set forth in Chapter 19 of Division 1 of Title 5 of the California Code of Regulations.

(b) Programs established pursuant to this article may operate only pursuant to the authorization of the governing board of a school district.

(c) Notwithstanding any other provision of law or regulation, a program operated pursuant to this article by a city or county in partnership with a community-based organization, with the approval of a local education agency or agencies and operated on a schoolsite may operate for up to 30 hours per week without obtaining a license or special permit under Chapter 3.4 (commencing with Section 1596.70) or Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code.

8489.8. Programs established pursuant to this article may be conducted upon the grounds of a community park or recreational area if the park or recreational area is adjacent to the schoolsite.

8489.9. This article 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.

CHAPTER 454

An act to amend Sections 5806, 5811, 5814, and 5814.5 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

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

(a) In 1999, the Legislature recognized the longstanding problem of the underfunded community mental health care system and the consequences of severely mentally ill adults not getting treatment resulting in these adults being homeless, incarcerated in jails and prisons, and hospitalized.

(b) The Legislature began to address this problem by funding three pilot programs in Los Angeles, Sacramento, and Stanislaus Counties to provide extended community mental health services and outreach to mentally ill adults who are homeless or at risk of homelessness.

(c) Chapter 617 of the Statutes of 1999 (AB 34), required the State Department of Mental Health to evaluate these programs and determine if they were effective in reducing the risk of continued homelessness, incarceration, or hospitalization.

(d) A May 2000 report showed that the legislation has been a great success, and the programs are having excellent results. Days of hospitalization were reduced by 60 percent, days of homelessness were reduced by 65 percent, and days in jail were reduced by 80 percent.

(e) The State Budget for the 2000–01 fiscal year added 26 additional counties and cities to participate in the program. These counties have developed new programs in efforts to replicate the success of the three pilot programs in order to take this program statewide.

(f) While the program has been successful in helping those that it has served, there is still the need to expand the program to service a sufficient number of people so as to make a difference noticeable to law enforcement officers and the public as to the number of homeless and mentally ill people on our streets; a difference noticeable to sheriffs as to the population in their jails of people who are suffering from mental

illnesses; and a noticeable difference in the number of hospitalizations of people with mental illness who did not receive timely assistance.

(g) The counties receiving funding for this program should continue to be required to demonstrate the effectiveness of the program, including those who will have received funds on a countywide basis for at least three years. Those counties should be required to quantify the benefits and the impact the program is making on the streets, in the jails, and in hospitals.

(h) One of the greatest values of integrated treatment services is that it can lead to recovery by dealing with all of the aspects of a person's mental illness. For those counties that were funded both in the 1999–2000 and 2000–01 fiscal years, there are now nearly 1,000 individuals who will have received services for more than a year. Those programs are evaluated on the extent to which they are succeeding in enabling the individual served to significantly recover and reduce their overall public dependence due to their mental illness.

(i) The outreach services of the AB 34 program provide opportunities for earlier intervention so that a person's mental illness can be treated before it is as severe as it might otherwise become if left untreated for a considerable period of time. Chapter 617 of the Statutes of 1999 specifically expanded outreach to serve individuals who were not homeless and were living with their family members. Many of these individuals are likely to be experiencing the early phases of severe mental illness. Studies from pilot programs in Australia, Canada, and Norway show that when outreach is expanded to include families, primary care physicians, and the general community, treatment is sought and received within six months of the onset of a severe mental illness as compared to more than two years of untreated mental illness without this special outreach effort. These same studies also show that when treatment is provided within the first six months of the onset of symptoms of mental illness, the majority of individuals are back in full-time work or education within one year of treatment. Less than 20 percent of individuals with untreated illnesses of more than two years achieve such full recovery even following several years of treatment.

(j) Outreach efforts should include outreach to family members of persons with mental illness, employment centers, and other places where young adults are likely to be found in order to enhance the likelihood that symptoms will be more readily recognized and treatment sought before the illness has progressed to a level that results in homelessness.

SEC. 2. Section 5806 of the Welfare and Institutions Code is amended to read:

5806. The State Department of Mental Health shall establish service standards that ensure that members of the target population are identified, and services provided to assist them to live independently,

work, and reach their potential as productive citizens. The department shall provide annual oversight of grants issued pursuant to this part for compliance with these standards. These standards shall include, but are not limited to, all of the following:

(a) A service planning and delivery process that is target population based and includes the following:

(1) Determination of the numbers of clients to be served and the programs and services that will be provided to meet their needs. The local director of mental health shall consult with the sheriff, the police chief, the probation officer, the mental health board, contract agencies, and family, client, ethnic and citizen constituency groups as determined by the director.

(2) Plans for services, including outreach to families whose severely mentally ill adult is living with them, design of mental health services, coordination and access to medications, psychiatric and psychological services, substance abuse services, supportive housing or other housing assistance, vocational rehabilitation, and veterans' services. Plans shall also contain evaluation strategies, that shall consider cultural, linguistic, gender, age, and special needs of minorities in the target populations. Provision shall be made for staff with the cultural background and linguistic skills necessary to remove barriers to mental health services due to limited-English-speaking ability and cultural differences. Recipients of outreach services may include families, the public, primary care physicians, and others who are likely to come into contact with individuals who may be suffering from an untreated severe mental illness who would be likely to become homeless if the illness continued to be untreated for a substantial period of time. Outreach to adults may include adults voluntarily or involuntarily hospitalized as a result of a severe mental illness.

(3) Provisions for services to meet the needs of target population clients who are physically disabled.

(4) Provision for services to meet the special needs of older adults.

(5) Provision for family support and consultation services, parenting support and consultation services, and peer support or self-help group support, where appropriate.

(6) Provision for services to be client-directed and that employ psychosocial rehabilitation and recovery principles.

(7) Provision for psychiatric and psychological services that are integrated with other services and for psychiatric and psychological collaboration in overall service planning.

(8) Provision for services specifically directed to seriously mentally ill young adults 25 years of age or younger who are homeless or at significant risk of becoming homeless. These provisions may include

continuation of services that would still be received through other funds had eligibility not been terminated due to age.

(9) Services reflecting special needs of women from diverse cultural backgrounds, including supportive housing that accepts children, personal services coordinator therapeutic treatment, and substance treatment programs that address gender specific trauma and abuse in the lives of persons with mental illness, and vocational rehabilitation programs that offer job training programs free of gender bias and sensitive to the needs of women.

(10) Provision for housing for clients that is immediate, transitional, permanent, or all of these.

(11) Provision for clients who have been suffering from an untreated severe mental illness for less than one year, and who do not require the full range of services but are at risk of becoming homeless unless a comprehensive individual and family support services plan is implemented. These clients shall be served in a manner that is designed to meet their needs.

(b) Each client shall have a clearly designated mental health personal services coordinator who may be part of a multidisciplinary treatment team who is responsible for providing or assuring needed services. Responsibilities include complete assessment of the client's needs, development of the client's personal services plan, linkage with all appropriate community services, monitoring of the quality and follow through of services, and necessary advocacy to ensure each client receives those services which are agreed to in the personal services plan. Each client shall participate in the development of his or her personal services plan, and responsible staff shall consult with the designated conservator, if one has been appointed, and, with the consent of the client, consult with the family and other significant persons as appropriate.

(c) The individual personal services plan shall ensure that members of the target population involved in the system of care receive age, gender, and culturally appropriate services, to the extent feasible, that are designed to enable recipients to:

(1) Live in the most independent, least restrictive housing feasible in the local community, and for clients with children, to live in a supportive housing environment that strives for reunification with their children or assists clients in maintaining custody of their children as is appropriate.

(2) Engage in the highest level of work or productive activity appropriate to their abilities and experience.

(3) Create and maintain a support system consisting of friends, family, and participation in community activities.

(4) Access an appropriate level of academic education or vocational training.

(5) Obtain an adequate income.

(6) Self-manage their illness and exert as much control as possible over both the day-to-day and long-term decisions which affect their lives.

(7) Access necessary physical health care and maintain the best possible physical health.

(8) Reduce or eliminate serious antisocial or criminal behavior and thereby reduce or eliminate their contact with the criminal justice system.

(9) Reduce or eliminate the distress caused by the symptoms of mental illness.

(10) Have freedom from dangerous addictive substances.

(d) The individual personal services plan shall describe the service array that meets the requirements of subdivision (c), and to the extent applicable to the individual, the requirements of subdivision (a).

SEC. 3. Section 5811 of the Welfare and Institutions Code is amended to read:

5811. The State Department of Mental Health shall provide participating counties all of the following:

(a) Request for proposals, application guidelines, and format, and coordination and oversight of the selection process as described in Article 2 (commencing with Section 5803).

(b) Contracts with each state funded county stipulating the approved budget, performance outcomes, and scope of work.

(c) Training, consultation, and technical assistance for county applicants. This training, consultation, and technical assistance shall include:

(1) Efforts to ensure that all of the different programs are operating as well as they can.

(2) Information on which programs are having particular success in particular areas so that they can be replicated in other counties.

(3) Technical assistance to counties in their first two years of participation to ensure quality and cost-effective service.

SEC. 4. Section 5814 of the Welfare and Institutions Code is amended to read:

5814. (a) (1) This part shall be implemented only to the extent that funds are appropriated for purposes of this part. To the extent that funds are made available, the first priority shall go to maintain funding for the existing programs that meet adult system of care contract goals. The next priority for funding shall be given to counties with a high incidence of persons who are severely mentally ill and homeless or at risk of homelessness, and meet the criteria developed pursuant to paragraphs (3) and (4).

(2) The director shall establish a methodology for awarding grants under this part consistent with the legislative intent expressed in Section 5802, and in consultation with the advisory committee established in this subdivision.

(3) (A) The director shall establish an advisory committee for the purpose of providing advice regarding the development of criteria for the award of grants, and the identification of specific performance measures for evaluating the effectiveness of grants. The committee shall review evaluation reports and make findings on evidence-based best practices and recommendations for grant conditions. At not less than one meeting annually, the advisory committee shall provide to the director written comments on the performance of each of the county programs. Upon request by the department, each participating county that is the subject of a comment shall provide a written response to the comment. The department shall comment on each of these responses at a subsequent meeting.

(B) The committee shall include, but not be limited to, representatives from state, county, and community veterans' services and disabled veterans outreach programs, supportive housing and other housing assistance programs, law enforcement, county mental health and private providers of local mental health services and mental health outreach services, the Board of Corrections, the State Department of Alcohol and Drug Programs, local substance abuse services providers, the Department of Rehabilitation, providers of local employment services, the State Department of Social Services, the Department of Housing and Community Development, a service provider to transition youth, the United Advocates for Children of California, the California Mental Health Advocates for Children and Youth, the Mental Health Association of California, the California Alliance for the Mentally Ill, the California Network of Mental Health Clients, the Mental Health Planning Council, and other appropriate entities.

(4) The criteria for the award of grants shall include, but not be limited to, all of the following:

(A) A description of a comprehensive strategic plan for providing outreach, prevention, intervention, and evaluation in a cost appropriate manner corresponding to the criteria specified in subdivision (c).

(B) A description of the local population to be served, ability to administer an effective service program, and the degree to which local agencies and advocates will support and collaborate with program efforts.

(C) A description of efforts to maximize the use of other state, federal, and local funds or services that can support and enhance the effectiveness of these programs.

(b) In each year in which additional funding is provided by the State Budget the department shall establish programs that offer individual counties sufficient funds to comprehensively serve severely mentally ill adults who are homeless, recently released from a county jail or the state prison, or others who are untreated, unstable, and at significant risk of incarceration or homelessness unless treatment is provided to them and who are severely mentally ill adults. For purposes of this subdivision, ''severely mentally ill adults'' are those individuals described in subdivision (b) of Section 5600.3. In consultation with the advisory committee established pursuant to paragraph (3) of subdivision (a), the department shall report to the Legislature on or before May 1 of each year in which additional funding is provided, and shall evaluate, at a minimum, the effectiveness of the strategies in providing successful outreach and reducing homelessness, involvement with local law enforcement, and other measures identified by the department. The evaluation shall include for each program funded in the current fiscal year as much of the following as available information permits:

(1) The number of persons served, and of those, the number who are able to maintain housing, and the number who receive extensive community mental health services.

(2) The number of persons with contacts with local law enforcement and the extent to which local and state incarceration has been reduced or avoided.

(3) The number of persons participating in employment service programs including competitive employment.

(4) The number of persons contacted in outreach efforts who appear to be severely mentally ill, as described in Section 5600.3, who have refused treatment after completion of all applicable outreach measures.

(5) The amount of hospitalization that has been reduced or avoided.

(6) The extent to which veterans identified through these programs' outreach are receiving federally funded veterans' services for which they are eligible.

(7) The extent to which programs funded for three or more years are making a measurable and significant difference on the street, in hospitals, and in jails, as compared to other counties or as compared to those counties in previous years.

(c) Each project shall include outreach and service grants in accordance with a contract between the state and approved counties that reflects the number of anticipated contacts with people who are homeless or at risk of homelessness, and the number of those who are severely mentally ill and who are likely to be successfully referred for treatment and will remain in treatment as necessary.

(d) All counties that receive funding shall be subject to specific terms and conditions of oversight and training which shall be developed by the department, in consultation with the advisory committee.

(e) (1) As used in this part, ''receiving extensive mental health services'' means having a personal services coordinator, as described in subdivision (b) of Section 5806, and having an individual personal service plan, as described in subdivision (c) of Section 5806.

(2) The funding provided pursuant to this part shall be sufficient to provide mental health services, medically necessary medications to treat severe mental illnesses, alcohol and drug services, transportation, supportive housing and other housing assistance, vocational rehabilitation and supported employment services, money management assistance for accessing other health care and obtaining federal income and housing support, accessing veterans' services, stipends, and other incentives to attract and retain sufficient numbers of qualified professionals as necessary to provide the necessary levels of these services. These grants shall, however, pay for only that portion of the costs of those services not otherwise provided by federal funds or other state funds.

(3) Methods used by counties to contract for services pursuant to paragraph (2) shall promote prompt and flexible use of funds, consistent with the scope of services for which the county has contracted with each provider.

(f) Contracts awarded pursuant to this part shall be exempt from the Public Contract Code and the state administrative manual and shall not be subject to the approval of the Department of General Services.

(g) Notwithstanding any other provision of law, funds awarded to counties pursuant to this part and Part 4 (commencing with Section 5850) shall not require a local match in funds.

SEC. 5. Section 5814.5 of the Welfare and Institutions Code is amended to read:

5814.5. (a) (1) In any year in which funds are appropriated for this purpose through the annual Budget Act, counties funded under this part in the 1999–2000 fiscal year are eligible for funding to continue their programs if they have successfully demonstrated the effectiveness of their grants received in that year and to expand their programs if they also demonstrate significant continued unmet need and capacity for expansion without compromising quality or effectiveness of care.

(2) In any year in which funds are appropriated for this purpose through the annual Budget Act, other counties or portions of counties, or cities that operate independent public mental health programs pursuant to Section 5615 of the Welfare and Institutions Code, are eligible for funding to establish programs if a county or eligible city demonstrates that it can provide comprehensive services, as set forth in

this part, to a substantial number of adults who are severely mentally ill, as defined in Section 5600.3, and are homeless or recently released from the county jail or who are untreated, unstable, and at significant risk of incarceration or homelessness unless treatment is provided.

(b) (1) Counties eligible for funding pursuant to subdivision (a) shall be those that have or can develop integrated adult service programs that meet the criteria for an adult system of care, as set forth in Section 5806, and that have, or can develop, integrated forensic programs with similar characteristics for parolees and those recently released from county jail who meet the target population requirements of Section 5600.3 and are at risk of incarceration unless the services are provided. Before a city or county submits a proposal to the state to establish or expand a program, the proposal shall be reviewed by a local advisory committee or mental health board, which may be an existing body, that includes clients, family members, private providers of services, and other relevant stakeholders. Local enrollment for integrated adult service programs and for integrated forensic programs funded pursuant to subdivision (a) shall adhere to all conditions set forth by the department, including the total number of clients to be enrolled, the providers to which clients are enrolled and the maximum cost for each provider, the maximum number of clients to be served at any one time, the outreach and screening process used to identify enrollees, and the total cost of the program. Local enrollment of each individual for integrated forensic programs shall be subject to the approval of the county mental health director or his or her designee.

(2) Each county shall ensure that funds provided by these grants are used to expand existing integrated service programs that meet the criteria of the adult system of care to provide new services in accordance with the purpose for which they were appropriated and allocated, and that none of these funds shall be used to supplant existing services to severely mentally ill adults. In order to ensure that this requirement is met, the department shall develop methods and contractual requirements, as it determines necessary. At a minimum, these assurances shall include that state and federal requirements regarding tracking of funds are met and that patient records are maintained in a manner that protects privacy and confidentiality, as required under federal and state law.

(c) Each county selected to receive a grant pursuant to this section shall provide data as the department may require, that demonstrates the outcomes of the adult system of care programs, shall specify the additional numbers of severely mentally ill adults to whom they will provide comprehensive services for each million dollars of additional funding that may be awarded through either an integrated adult service grant or an integrated forensic grant, and shall agree to provide services in accordance with Section 5806. Each county's plan shall identify and

include sufficient funding to provide housing for the individuals to be served, and shall ensure that any hospitalization of individuals participating in the program are coordinated with the provision of other mental health services provided under the program.

CHAPTER 455

An act to add and repeal Article 12.5 (commencing with Section 18836) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Article 12.5 (commencing with Section 18836) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 12.5. Lupus Foundation of America, California Chapters Fund

18836. (a) An individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the Lupus Foundation of America, California Chapters Fund, which is established by Section 18837. That designation is to be used as a voluntary contribution on the tax return.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on a joint return.

(c) A designation shall be made for any taxable year on the initial return for that taxable year and once made is irrevocable. If payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made. If no designee is specified, the contribution shall be transferred to the General Fund after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and administration of funds under this article.

(d) If an individual designates a contribution to more than one account or fund listed on the tax return, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the form of the return to include a space labeled the ''Lupus Foundation of America, California Chapters Fund'' to allow for the designation permitted. The form shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used for lupus education, awareness, and research.

(f) Notwithstanding any other provision, a voluntary contribution designation for the Lupus Foundation of America, California Chapters Fund shall not be added on the tax return until another voluntary contribution designation is removed.

(g) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

18837. There is in the State Treasury the Lupus Foundation of America, California Chapters Fund to receive contributions made pursuant to Section 18836. The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money that taxpayers have designated pursuant to Section 18836 to be transferred to the Lupus Foundation of America, California Chapters Fund. The Controller shall transfer from the Personal Income Tax Fund to the Lupus Foundation of America, California Chapters Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18836 for payment into that fund.

18838. All money transferred to the Lupus Foundation of America, California Chapters Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) To the State Department of Health Services for allocation on an equal basis to all California-based operating chapters of the Lupus Foundation of America for education and awareness, and to provide research grants to develop and advance the understanding, causes, techniques, and modalities effective in the prevention, care, treatment, and cure of lupus.

Funds may not be used for the department's administrative costs.

18839. It is the intent of the Legislature that this article create an additional funding source for lupus education, awareness, and research and shall be used to supplement, not supplant, other funding sources for education, awareness, and research.

18840. (a) Unless repealed earlier pursuant to subdivision (b), this article shall remain in effect only until January 1 of the fifth taxable year following the first appearance of the Lupus Foundation of America,

California Chapters Fund on the tax return, and as of that date is repealed, unless a later enacted statute, that is enacted before the applicable date, deletes or extends that date.

(b) If, in any calendar year after the second taxable year the Lupus Foundation of America, California Chapters Fund appears on the tax return, the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), or the adjusted amount specified in subdivision (c) for subsequent taxable years, as may be applicable, then this article is repealed with respect to taxable years beginning on or after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contribution.

(c) For each calendar year, beginning with the third calendar year the Lupus Foundation of America, California Chapters Fund appears on the tax return, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

CHAPTER 456

An act to amend Section 40916 of the Health and Safety Code, relating to air pollution.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 40916 of the Health and Safety Code is amended to read:

40916. (a) The state board shall make technical assistance available to a district, at the district's request, to support attainment planning and air pollutant transport planning and associated analyses. If the state board lacks sufficient resources to make technical assistance available to each district that requests assistance, the state board shall give priority to those districts that have limited financial or technical capabilities.

(b) The state board shall develop guidelines for use by the districts to prepare emission inventories, develop monitoring networks, and develop methods for the validation of air quality models.

(c) The state board shall develop and periodically update guidelines for use by the districts to establish equivalent emission reductions for mobile source emission control strategies and transportation control measures.

(d) (1) The state board may recommend a suggested control measure for adoption by a district to meet the requirements of the district's plan adopted pursuant to this chapter for any architectural paint or coating, if the state board determines all of the following:

(A) The control measure will achieve a feasible reduction in volatile organic compounds emitted by the architectural paint or coating. For purposes of this paragraph, ''feasible reduction in volatile organic compounds emitted'' means an emission limitation that is achievable, taking into account environmental, energy, and economic impacts.

(B) Adequate data exist to establish that the control measure is necessary to attain state and federal ambient air quality standards.

(C) The control measure is commercially and technologically feasible and necessary.

(2) Nothing in this subdivision shall limit or affect the ability of a district to adopt or enforce rules related to architectural paint or coatings. Every rule adopted by a district regarding architectural paint or coatings shall be adopted by the governing board of the district in accordance with existing law, and shall include at least one public workshop.

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.

CHAPTER 457

An act to amend Sections 626, 11200, and 11208 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 626 of the Vehicle Code is amended to read:

626. A ''traffic violator school'' is a business that, for compensation, provides, or offers to provide, instruction in traffic safety, including, but not limited to, classroom traffic violator curricula, for persons referred by a court pursuant to Section 42005 or to other persons who elect to attend.

SEC. 2. Section 11200 of the Vehicle Code is amended to read:

11200. (a) The department shall license schools for traffic violators for purposes of Section 42005 and to provide traffic safety instruction to other persons who elect to attend. A person may not own or operate a traffic violator school or, except as provided in Section 11206, give instruction for compensation in a traffic violator school without a currently valid license issued by the department.

(b) (1) Any person who elects to attend a traffic violator school shall receive from the traffic violator school and shall sign a copy of the following consumer disclosure statement prior to the payment of the school fee and attending the school:

''Course content is limited to traffic violator curricula approved by the Department of Motor Vehicles. Students in the classroom include traffic offenders, repeat traffic offenders, adults, and teenagers, and those who have and those who have not been referred by a court. Instructor training, business regulatory standards, and Vehicle Code requirements of traffic violator schools are not equal to the training, standards, and Vehicle Code requirements of licensed driving schools (California Vehicle Code).''

(2) In the case of a minor who elects to attend a traffic violator school, the minor's parent or guardian shall sign the consumer disclosure statement.

(3) A copy of each signed disclosure statement shall be retained by the traffic violator school for a minimum of 36 months.

(4) This subdivision does not apply to persons referred by courts pursuant to Section 42005.

SEC. 3. Section 11208 of the Vehicle Code is amended to read:

11208. (a) Fees for issuance by the department of a license to a traffic violator school owner shall be as follows:

(1) For the original license or an ownership change which requires a new application, except as provided by Section 42231, a fee of one hundred fifty dollars ($150), with an additional fee of seventy dollars ($70) for each separate traffic violator school branch or classroom location licensed. The fee prescribed by this subdivision is nonrefundable.

(2) For annual renewal of the license for a traffic violator school and for each branch or classroom location, a fee of fifty dollars ($50).

(3) If alteration of an existing license is required by a firm name change, a change in corporate officer structure, address change, or the addition of a traffic violator school branch or classroom location, a fee of seventy dollars ($70).

(4) For replacement of the license certificate when the original license is lost, stolen, or mutilated, a fee of fifteen dollars ($15).

(b) Fees for the issuance by the department of a license for a traffic violator school operator shall be as follows:

(1) For the original license, a nonrefundable fee of one hundred dollars ($100).

(2) For annual renewal of the license, a fee of fifty dollars ($50).

(3) If alteration of an existing license is caused by a change in the name or location of the established principal place of business of the traffic violator school operated by the licensee, including a transfer by a licensee from one traffic violator school to another, a fee of fifteen dollars ($15).

(4) For replacement of the license certificate when the original license is lost, stolen, or mutilated, a fee of fifteen dollars ($15).

(c) Fees for the issuance by the department of a license for a traffic violator school instructor shall be as follows:

(1) For the original license, except as provided by Section 42231, a nonrefundable fee of thirty dollars ($30).

(2) For the triennial renewal of a license, a fee of thirty dollars ($30).

(3) If alteration of an existing license is required by a change in the instructor's employing school's name or location, or transfer of the instructor's license to another employing school, a fee of fifteen dollars ($15).

(4) For replacement of the instructor's license certificate when the original license is lost, stolen, or mutilated, a fee of fifteen dollars ($15).

(d) The department shall charge a fee, not to exceed three dollars ($3), for each completion certificate issued by a traffic violator school to each

person referred by a court pursuant to Section 42005 and completing instruction at the traffic violator school. The amount of the fee shall be determined by the department and shall be a fee sufficient to defray the actual costs incurred by the department for publication and distribution of lists of schools for traffic violators pursuant to Section 11205, for monitoring instruction, business practices, and records of schools for traffic violators and for any other activities deemed necessary by the department to assure high quality education for traffic violators. Upon satisfactory completion of the instruction offered by a licensed traffic violator school, the traffic violator school shall provide the student referred by a court pursuant to Section 42005 with a certificate of completion furnished by the department. A certificate of completion shall not be issued to a person who elects to attend a traffic violator school. A traffic violator school shall not charge a fee in excess of the fee charged by the department pursuant to this subdivision for furnishing a certificate of completion. A traffic violator school may charge a fee not to exceed three dollars ($3), in addition to the fee charged by the department for the issuance of a duplicate certificate of completion. A student referred by a court pursuant to Section 42005 shall present this certificate of completion to the court as proof of completion of instruction, and no other proof of completion of instruction may be accepted by the court.

(e) The department shall compile its actual costs incurred to determine the fee prescribed in subdivision (d) and make available its financial records used in the determination of the fee for completion certificates. The fee shall be adjusted every odd-numbered year based upon the costs incurred during the preceding two fiscal years. The records described in this subdivision are public records.

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.

CHAPTER 458

An act to add Section 4119.2 to the Business and Professions Code, to add Section 49414 to the Education Code, and to add Section

1797.197 to the Health and Safety Code, relating to emergency medical services.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 4119.2 is added to the Business and Professions Code, to read:

4119.2. (a) Notwithstanding any other provision of law, a pharmacy may furnish epinephrine auto-injectors to a school district or county office of education pursuant to Section 49414 of the Education Code if all of the following are met:

(1) The epinephrine auto-injectors are furnished exclusively for use at a school district site or county office of education.

(2) A physician and surgeon provides a written order that specifies the quantity of epinephrine auto-injectors to be furnished.

(b) Records regarding the acquisition and disposition of epinephrine auto-injectors furnished pursuant to subdivision (a) shall be maintained by both the school district or county office of education for a period of three years from the date the records were created. The school district or county office of education shall be responsible for monitoring the supply of auto-injectors and assuring the destruction of expired auto-injectors.

SEC. 2. Section 49414 is added to the Education Code, to read:

49414. (a) A school district or county office of education may provide emergency epinephrine auto-injectors to trained personnel, and trained personnel may utilize those epinephrine auto-injectors to provide emergency medical aid to persons suffering from an anaphylactic reaction. Any school district or county office of education choosing to exercise the authority provided under this subdivision shall not receive state funds specifically for the purposes of this subdivision.

(b) For purposes of this section, the following terms have the following meaning:

(1) ''Anaphylaxis'' means a potentially life-threatening hypersensitivity to a substance.

(A) Symptoms of anaphylaxis may include shortness of breath, wheezing, difficulty breathing, difficulty talking or swallowing, hives, itching, swelling, shock, or asthma.

(B) Causes of anaphylaxis may include, but are not limited to, an insect sting, food allergy, drug reaction, and exercise.

(2) ''Epinephrine auto-injector'' means a disposable drug delivery system with a spring-activated concealed needle that is designed for emergency administration of epinephrine to provide rapid, convenient first aid for persons suffering a potentially fatal reaction to anaphylaxis.

(c) Each public and private elementary and secondary school in the state may voluntarily determine whether or not to make emergency epinephrine auto-injectors and trained personnel available at its school. In making this determination, a school shall evaluate the emergency medical response time to the school and determine whether initiating emergency medical services is an acceptable alternative to epinephrine auto-injectors and trained personnel. Any school choosing to exercise the authority provided under this subdivision shall not receive state funds specifically for the purposes of this subdivision.

(d) Each public and private elementary and secondary school in the state may designate one or more school personnel on a voluntary basis to receive initial and annual refresher training, based on the standards developed pursuant to subdivision (e), regarding the storage and emergency use of an epinephrine auto-injector from the school nurse or other qualified person designated by the school district physician, the medical director of the local health department, or the local emergency medical services director. Any school choosing to exercise the authority provided under this subdivision shall not receive state funds specifically for the purposes of this subdivision.

(e) (1) The Superintendent of Public Instruction shall establish minimum standards of training for the administration of epinephrine auto-injectors that satisfy the requirements in paragraph (2). For purposes of this subdivision, the Superintendent of Public Instruction shall consult with organizations and providers with expertise in administering epinephrine auto-injectors and administering medication in a school environment, including, but not limited to, the State Department of Health Services, the Emergency Medical Services Authority, the American Academy of Allergy, Asthma, and Immunology, the California School Nurses Organization, the California Medical Association, the American Academy of Pediatrics, and others.

(2) Training established pursuant to this subdivision shall include all of the following:

(A) Techniques for recognizing symptoms of anaphylaxis.

(B) Standards and procedures for the storage and emergency use of epinephrine auto-injectors.

(C) Emergency follow-up procedures, including calling the emergency 911 phone number and contacting, if possible, the pupil's parent and physician.

(D) Instruction and certification in cardiopulmonary resuscitation.

(E) Written materials covering the information required under this subdivision.

(3) A school shall retain for reference the written materials prepared under subparagraph (E) of paragraph (2).

(f) A school nurse, or if the school does not have a school nurse, a person who has received training pursuant to subdivision (d), may do the following:

(1) Obtain from the school district physician, the medical director of the local health department, or the local emergency medical services director a prescription for epinephrine auto-injectors.

(2) Immediately administer an epinephrine auto-injector to a person exhibiting potentially life-threatening symptoms of anaphylaxis at school or a school activity when a physician is not immediately available.

(g) A person who has received training as set forth in subdivision (d) or a school nurse shall initiate emergency medical services or other appropriate medical follow up in accordance with the training materials retained pursuant to paragraph (3) of subdivision (e).

(h) Any school district or county office of education electing to utilize epinephrine auto-injectors for emergency medical aid shall create a plan to address all of the following issues:

(1) Designation of the individual or individuals who will provide the training pursuant to subdivision (d).

(2) Designation of the school district physician, the medical director of the local health department, or the local emergency medical services director that the school district or county office of education will consult for the prescription for epinephrine auto-injectors pursuant to paragraph (1) of subdivision (f).

(3) Documentation as to which individual, the school nurse or other trained person pursuant to subdivision (f), in the school district or county office of education will obtain the prescription from the physician and the medication from a pharmacist.

(4) Documentation as to where the medication is stored and how the medication will be made readily available in case of an emergency.

SEC. 3. Section 1797.197 is added to the Health and Safety Code, to read:

1797.197. The authority shall establish training and standards for all prehospital emergency care personnel, as defined pursuant to paragraph (2) of subdivision (a) of Section 1797.189, regarding the characteristics and method of assessment and treatment of anaphylactic reactions and the use epinephrine. The authority shall promulgate regulations regarding these matters for use by all prehospital emergency care personnel.

CHAPTER 459

An act to add Article 6.3 (commencing with Section 92655) to Chapter 6 of Part 57 of the Education Code, relating to the University of California.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Article 6.3 (commencing with Section 92655) is added to Chapter 6 of Part 57 of the Education Code, to read:

Article 6.3. Health Professions Education and Outreach

92655. (a) The Legislature requests the Regents of the University of California, on or before January 15, 2003, to report to the Legislature concerning the University of California's existing and planned efforts to recruit students to the university's schools of medicine, dentistry, and optometry from communities and populations that are dentally and medically underserved, with the expressed intent that these students return and practice in these dentally and medically underserved areas. It is the intent of the Legislature that the report include, but need not be limited to, the following information:

(1) A recommendation as to the best methods and best practices to address the following concerns:

(A) Providing dental, medical, and optometric services to underserved communities and populations.

(B) Reducing the physician-to-population ratio to one primary care physician per 3,500 population.

(2) The identification of the specific resources needed to implement the best methods and practices identified in the report.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends that date.

92665.1. The Legislature requests the Regents of the University of California, to the extent possible, to use existing resources to establish dental, medical, and optometric health professions outreach and exposure programs for elementary, high school, and undergraduate students, including community college students.

CHAPTER 460

An act to amend Sections 286 and 1660 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 286 of the Vehicle Code is amended to read:

286. The term ''dealer'' does not include any of the following:

(a) Insurance companies, banks, finance companies, public officials, or any other person coming into possession of vehicles in the regular course of business, who sells vehicles under a contractual right or obligation, in performance of an official duty, or in authority of any court of law, if the sale is for the purpose of saving the seller from loss or pursuant to the authority of a court.

(b) Persons who sell or distribute vehicles of a type subject to registration for a manufacturer to vehicle dealers licensed under this code, or who are employed by manufacturers or distributors to promote the sale of vehicles dealt in by those manufacturers or distributors. However, any of those persons who also sell vehicles at retail are vehicle dealers and are subject to this code.

(c) Persons regularly employed as salespersons by vehicle dealers licensed under this code while acting within the scope of that employment.

(d) Persons engaged exclusively in the bona fide business of exporting vehicles or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States, if no federal excise tax is legally payable or refundable on any of the transactions. Persons not engaged exclusively in the bona fide business of exporting vehicles, but who are engaged in the business of soliciting orders for the sale and delivery of vehicles, outside the territorial limits of the United States are exempt from licensure as dealers only if their sales of vehicles produce less than 10 percent of their total gross revenue from all business transacted.

(e) Persons not engaged in the purchase or sale of vehicles as a business, who dispose of any vehicle acquired and used in good faith, for their own personal use, or for use in their business, and not for the purpose of avoiding the provisions of this code.

(f) Persons who are engaged in the purchase, sale, or exchange of vehicles, other than motorcycles subject to identification under this code, which are not intended for use on the highways.

(g) Persons temporarily retained as auctioneers solely for the purpose of disposing of vehicle stock inventories by means of public auction on behalf of the owners at the owners' place of business, or as otherwise approved by the department, if intermediate physical possession or control of, or an ownership interest in, the inventory is not conveyed to the persons so retained.

(h) Persons who are engaged exclusively in the business of purchasing, selling, servicing, or exchanging racing vehicles, parts for racing vehicles, and trailers designed and intended by the manufacturer to be used exclusively for carrying racing vehicles. For purposes of this subdivision, ''racing vehicle'' means a motor vehicle of a type used exclusively in a contest of speed or in a competitive trial of speed which is not intended for use on the highways.

(i) Any person who is a lessor.

(j) Any person who is a renter.

(k) Any salvage pool.

(*l*) Any yacht broker who is subject to the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code) and who sells used boat trailers in conjunction with the sale of a vessel.

(m) Any licensed automobile dismantler who sells vehicles that have been reported for dismantling as provided in Section 11520.

(n) The Director of Corrections when selling vehicles pursuant to Section 2813.5 of the Penal Code.

(o) (1) Any public or private nonprofit charitable, religious, or educational institution or organization that sells vehicles if all of the following conditions are met:

(A) The institution or organization qualifies for state tax-exempt status under Section 23701d of the Revenue and Taxation Code, and tax-exempt status under Section 501(c)(3) of the federal Internal Revenue Code.

(B) The vehicles sold were donated to the nonprofit charitable, religious, or educational institution or organization.

(C) The vehicles subject to retail sale meet all of the applicable equipment requirements of Division 12 (commencing with Section 24000) and are in compliance with emission control requirements as evidenced by the issuance of a certificate pursuant to subdivision (b) of Section 44015 of the Health and Safety Code. Under no circumstances may any institution or organization transfer the responsibility of obtaining a smog inspection certificate to the buyer of the vehicle.

(D) The proceeds of the sale of the vehicles are retained by that institution or organization for its charitable, religious, or educational purposes.

(2) An institution or organization described in paragraph (1) may sell vehicles on behalf of another institution or organization under the following conditions:

(A) The nonselling institution or organization meets the requirements of paragraph (1).

(B) The selling and nonselling institutions or organizations enter into a signed, written agreement pursuant to subparagraph (A) of paragraph (3) of subdivision (a) of Section 1660.

(C) The selling institution or organization transfers the proceeds from the sale of each vehicle to the nonselling institution or organization within 45 days of the sale. All net proceeds transferred to the nonselling institution or organization shall clearly be identifiable to the sale of a specific vehicle. The selling institution or organization may retain a percentage of the proceeds from the sale of a particular vehicle. However, any retained proceeds shall be used by the selling institution or organization for its charitable, religious, or educational purposes.

(D) At the time of transferring the proceeds, the selling institution or organization shall provide to the nonselling institution or organization, an itemized listing of the vehicles sold and the amount for which each vehicle was sold.

(E) In the event the selling institution or organization cannot complete a retail sale of a particular vehicle, or if the vehicle cannot be transferred as a wholesale transaction to a dealer licensed under this code, the vehicle shall be returned to the nonselling institution or organization and the written agreement revised to reflect that return. Under no circumstances may a selling institution or organization transfer or donate the vehicle to a third party that is excluded from the definition of a dealer under this section.

(3) An institution or organization described in this subdivision shall retain all records required to be retained pursuant to Section 1660.

(p) Any motor club, as defined in Section 12142 of the Insurance Code, that does not arrange or negotiate individual motor vehicle purchase transactions on behalf of its members but refers members to a new motor vehicle dealer for the purchase of a new motor vehicle and does not receive a fee from the dealer contingent upon the sale of the vehicle.

SEC. 2. Section 1660 of the Vehicle Code is amended to read:

1660. (a) Any institution or organization described in subdivision (o) of Section 286 shall keep the following records for not less than three years:

(1) The name and address of each vehicle donor and the year, make, vehicle identification number, and, if available, the license plate number of the donated vehicle.

(2) An itemized listing by vehicle identification number of the date each vehicle was donated, the date sold, and the amount for which it was sold.

(3) If the donated vehicle is being sold by an institution or organization on behalf of another institution or organization pursuant to paragraph (2) of subdivision (o) of Section 286, the following documentation shall be retained in the following manner:

(A) A signed, written agreement shall remain on the premises that identifies the percentage of the proceeds that may be retained by the selling institution or organization, a statement that each vehicle meets, or, unless sold at wholesale, by the time of sale will meet, the equipment requirements of Division 12 (commencing with Section 24000), and a statement that each vehicle is in compliance, or, unless sold at wholesale, at the time of sale will be in compliance, with emission control certification requirements pursuant to subdivision (b) of Section 44015 of the Health and Safety Code.

(B) A separate listing that identifies each vehicle by year, make, and vehicle identification number.

(C) All itemized listings pursuant to subparagraph (D) of paragraph (2) of subdivision (o) of Section 286.

(D) The selling institution or organization shall retain all documentation pertaining to the sale of vehicles on behalf of another institution or organization in the same manner as is required for the sale of vehicles donated to the selling institution or organization.

(b) The department may inspect the records of any nonprofit institution or organization that obtains donated vehicles in order to ascertain whether it meets the conditions specified in subdivision (o) of Section 286.

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.

CHAPTER 461

An act to add Section 25189.3 to the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 2, 2001. Filed with
Secretary of State October 3, 2001.]

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

SECTION 1. Section 25189.3 is added to the Health and Safety Code, to read:

25189.3. (a) For purposes of this section, the term ''permit'' means a hazardous waste facilities permit, interim status authorization, or standardized permit.

(b) The department shall suspend the permit of any facility for nonpayment of any facility fee assessed pursuant to Section 25205.2 or activity fee assessed pursuant to subdivision (d) of Section 25205.7, if the operator of the facility is subject to the fee, and if the State Board of Equalization has certified in writing to all of the following:

(1) The facility's operator is delinquent in the payment of the fee for one or more reporting periods.

(2) The State Board of Equalization has notified the facility's operator of the delinquency.

(3) The operator has exhausted the administrative rights of appeal provided by Chapter 3 (commencing with Section 43151) of Part 22 of Division 2 of the Revenue and Taxation Code, and the State Board of Equalization has determined that the operator is liable for the fee, or that the operator has failed to assert those rights.

(c) (1) The department shall suspend the permit of any facility for nonpayment of a penalty assessed upon the owner or operator for failure to comply with this chapter or the regulations adopted pursuant to this chapter, if the penalty has been imposed by a trial court judge or by an administrative hearing officer, if the person has agreed to pay the penalty pursuant to a written agreement resolving a lawsuit or an administrative order, or if the penalty has become final due to the person's failure to respond to the lawsuit or order.

(2) The department may suspend a permit pursuant to this subdivision only if the owner or operator is delinquent in the payment of the penalty and the department has notified the owner or operator of the delinquency pursuant to subdivision (d).

(d) Before suspending a permit pursuant to this section, the department shall notify the owner or operator of its intent to do so, and shall allow the owner or operator a minimum of 30 days in which to cure the delinquency.

(e) The department may deny a new permit or refuse to renew a permit on the same grounds for which the department is required to suspend a permit under this section, subject to the same requirements and conditions.

(f) (1) The department shall reinstate a permit that is suspended pursuant to this section upon payment of the amount due, if the permit has not otherwise been revoked or suspended pursuant to any other provision of this chapter or regulation. Until the department reinstates a permit suspended pursuant to this section, if the facility stores, treats, disposes of, or recycles hazardous wastes, the facility shall be in violation of this chapter. If the operator of the facility subsequently pays the amount due, the period of time for which the operator shall have been in violation of this chapter shall be from the date of the activity that is in violation until the day after the owner or operator submits the payment to the department.

(2) Except as otherwise provided in this section, the department is not required to take any other statutory or regulatory procedures governing the suspension of the permit before suspending a permit in compliance with the procedures of this section.

(g) (1) A suspension under this section shall be stayed while an authorized appeal of the fee or penalty is pending before a court or an administrative agency.

(2) For purposes of this subdivision, ''an authorized appeal'' means any appeal allowed pursuant to an applicable regulation or statute.

(h) The department may suspend a permit under this section based on a failure to pay the required fee or penalty that commenced prior to January 1, 2002, if the failure to pay has been ongoing for at least 30 days following that date.

(i) Notwithstanding Section 43651 of the Revenue and Taxation Code, the suspension of a permit pursuant to this section, the reason for the suspension, and any documentation supporting the suspension, shall be a matter of public record.

(j) (1) This section does not authorize the department to suspend a permit held by a government agency if the agency does not dispute the payment but nonetheless is unable to process the payment in a timely manner.

(2) This section does not apply to a site owned or operated by a federal agency if the department has entered into an agreement with that federal agency regarding the remediation of that site.

(k) This section does not limit or supersede Section 25186.

CHAPTER 462

An act to add Section 8587.5 to the Government Code, relating to emergency services.

[Approved by Governor October 2, 2001. Filed with
Secretary of State October 3, 2001.]

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

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

(a) Every year in California emergency service providers are unnecessarily killed or injured in traffic accidents. The National Safety Council reports that, for 1998, ambulances, fire apparatus, and police cars were involved in more than 32,000 crashes, 47 percent of which occurred with their emergency lights, sirens, or both, in use.

(b) Increased traffic, along with improved soundproofing of vehicles and the use of stereo systems and cellular telephones by drivers, contribute to the distraction of drivers on the state's streets and highways.

(c) Most major metropolitan areas in the state now utilize Traffic Signal Override Systems which, if combined with relatively inexpensive patented technologies that receive audible signals in emergency response vehicles and other motor vehicles, could facilitate the right of way, alert other emergency responders of similar vehicles in the vicinity, and thereby greatly enhance the safety of all emergency responders.

(d) Federal legislation known as the ''Transportation Equity Act for the 21st Century,'' Public Law 105-178, provides federal funding for programs that show the benefits of improving the safety of our roads. The federal share of funding can reach 100 percent where there is substantial public interest or benefit from the program.

(e) Therefore, it is the intent of the Legislature in enacting this act to require the Department of Transportation to apply for funding under the Transportation Equity Act for the 21st Century to test the ability of new technologies to reduce accidents for emergency responders.

SEC. 2. Section 8587.5 is added to the Government Code, to read:

8587.5. (a) The Department of Transportation shall, in cooperation with interested cities with Traffic Signal Override Systems, apply to the United States Secretary of Transportation for federal funding to conduct a research program in one or more cities to test the effectiveness of the installation of signal emitters and sensors in emergency response vehicles in reducing accidents and injuries.

(b) The project shall study the reduction in accidents and injuries involving emergency response vehicles in the program areas, shall, if possible, assess any reduction in response times by emergency response vehicles in the program areas, and may study other valuable data as deemed appropriate.

(c) The application shall seek full federal funding for the project, including the evaluation component. If the United States Secretary of

Transportation requires a nonfederal share of funding, the participating local governments shall pay this share equally.

(d) The department shall apply for federal funding within six months of the effective date of this section unless good cause exists to apply later or not to apply.

(e) Within six months after the study has been completed, the department shall submit a written report of its findings to the Senate Committee on Budget and Fiscal Review, the Senate Committee on Transportation, the Assembly Committee on Budget, and the Assembly Committee on Transportation.

CHAPTER 463

An act to amend Section 17415 of, and to add Sections 17550 and 17552 to, the Family Code, and to amend Section 903 of the Welfare and Institutions Code, relating to children.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. Section 17415 of the Family Code is amended to read:

17415. (a) It shall be the duty of the county welfare department to refer all cases in which a parent is absent from the home, or in which the parents are unmarried and parentage has not been established by the completion and filing of a voluntary declaration of paternity pursuant to Section 7573 or a court of competent jurisdiction, to the local child support agency immediately at the time the application for public assistance, including Medi-Cal benefits, or certificate of eligibility, is signed by the applicant or recipient, except as provided in Section 17552 of this code and Section 11477.04 of the Welfare and Institutions Code. If an applicant is found to be ineligible, the applicant shall be notified in writing that the referral of the case to the local child support agency may be terminated at the applicant's request. The county welfare department shall cooperate with the local child support agency and shall make available all pertinent information as provided in Section 17505.

(b) Upon referral from the county welfare department, the local child support agency shall investigate the question of nonsupport or paternity and shall take all steps necessary to obtain child support for the needy child, enforce spousal support as part of the state plan under Section 17604, and determine paternity in the case of a child born out of wedlock. Upon the advice of the county welfare department that a child is being

considered for adoption, the local child support agency shall delay the investigation and other actions with respect to the case until advised that the adoption is no longer under consideration. The granting of public assistance or Medi-Cal benefits to an applicant shall not be delayed or contingent upon investigation by the local child support agency.

(c) In cases where Medi-Cal benefits are the only assistance provided, the local child support agency shall provide child and spousal support services unless the recipient of the services notifies the local child support agency that only services related to securing health insurance benefits are requested.

(d) Where a court order has been obtained, any contractual agreement for support between the local child support agency or the county welfare department and the noncustodial parent shall be deemed null and void to the extent that it is not consistent with the court order.

(e) Whenever a family which has been receiving public assistance, including Medi-Cal, ceases to receive assistance, including Medi-Cal, the local child support agency shall, to the extent required by federal regulations, continue to enforce support payments from the noncustodial parent until the individual on whose behalf the enforcement efforts are made sends written notice to the local child support agency requesting that enforcement services be discontinued.

(f) The local child support agency shall, where appropriate, utilize reciprocal arrangements adopted with other states in securing support from an absent parent. In individual cases where utilization of reciprocal arrangements has proven ineffective, the local child support agency may forward to the Attorney General a request to utilize federal courts in order to obtain or enforce orders for child or spousal support. If reasonable efforts to collect amounts assigned pursuant to Section 11477 of the Welfare and Institutions Code have failed, the local child support agency may request that the case be forwarded to the Treasury Department for collection in accordance with federal regulations. The Attorney General, where appropriate, shall forward these requests to the Secretary of Health and Human Services, or a designated representative.

SEC. 2. Section 17550 is added to the Family Code, to read:

17550. (a) The Department of Child Support Services, in consultation with the State Department of Social Services, shall establish regulations by which the local child support agency, in any case of separation or desertion of a parent from a child that results in aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code being granted to the child, may compromise the obligor parent or parents' liability for public assistance debt, including interest thereon, owed to the state where the child for whom public assistance was paid is residing with the obligor parent, and all of the following conditions are met:

(1) The obligor parent establishes one of the following:

(A) The child has been adjudged a dependent of the court under Section 300 of the Welfare and Institutions Code and the child has been reunified with the obligor parent pursuant to a court order.

(B) The child received public assistance while living with a guardian or relative caregiver and the child has been returned to the custody of the obligor parent, provided that the obligor parent for whom the debt compromise is being considered was the parent with whom the child resided prior to the child's placement with the guardian or relative caregiver.

(2) The obligor parent, for whom the debt compromise is being considered, has an income less than 250 percent of the current federal poverty level.

(3) The local child support agency, pursuant to regulations set forth by the department, has determined that the compromise is necessary for the child's support.

(b) Prior to compromising an obligor parent's liability for debt incurred for either AFDC-FC payments provided to a child pursuant to Section 11400 of the Welfare and Institutions Code, or incurred for CalWORKs payments provided on behalf of a child, the local child support agency shall consult with the county child welfare department.

(c) Nothing in this section relieves an obligor, who has not been reunified with his or her child, of any liability for public assistance debt.

(d) For the purposes of this section, the following definitions apply:

(1) ''Guardian'' means the legal guardian of the child, who assumed care and control of the child while the child was in the guardian's control, and who is not a biological or adoptive parent.

(2) ''Relative caregiver'' means a relative as defined in subdivision (c) of Section 11362 of the Welfare and Institutions Code, who assumed primary responsibility for the child while the child was in the relative's care and control, and who is not a biological or adoptive parent.

(e) The department shall promulgate all necessary regulations pursuant to this section on or before October 1, 2002, including regulations that set forth guidelines to be used by the local child support agency when compromising public assistance debt.

SEC. 3. Section 17552 is added to the Family Code, to read:

17552. (a) The State Department of Social Services, in consultation with the Department of Child Support Services, shall promulgate regulations by which the county child welfare department, in any case of separation or desertion of a parent or parents from a child that results in aid under Section 11400 of the Welfare and Institutions Code, shall determine whether it is in the best interests of the child to have the case referred to the local child support agency for child support services. If reunification services are not offered or are terminated, the case may be

referred to the local child support agency. In making the determination, the department regulations shall provide the factors the county child welfare department shall consider, including:

(1) Whether the payment of support by the parent will pose a barrier to the proposed reunification, in that the payment of support will compromise the parent's ability to meet the requirements of the parent's reunification plan.

(2) Whether the payment of support by the parent will pose a barrier to the proposed reunification in that the payment of support will compromise the parent's current or future ability to meet the financial needs of the child.

(b) The department regulations shall provide that, where the county child welfare department determines that it is not in the best interests of the child to seek a support order against the parent, the county child welfare department shall refrain from referring the case to the local child support agency. The regulations shall define those circumstances in which it is not in the best interest of the child to refer the case to the local child support agency.

(c) The department regulations shall provide, where the county child welfare department determines that it is not in the child's best interest to have his or her case referred to the local child support agency, the county child welfare department shall review that determination following each court hearing held under Section 361.5 of the Welfare and Institutions Code, and shall refer the child's case to the local child support agency upon a determination that, due to a change in the child's circumstances, it is no longer contrary to the child's best interests to have his or her case referred to the local child support agency.

(d) The State Department of Social Services shall promulgate all necessary regulations pursuant to this section on or before October 1, 2002.

SEC. 4. Section 903 of the Welfare and Institutions Code is amended to read:

903. (a) The father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor, shall be liable for the reasonable costs of support of the minor while the minor is placed, or detained in, or committed to, any institution or other place pursuant to Section 625 or pursuant to an order of the juvenile court. However, a county shall not levy charges for the costs of support of a minor detained pursuant to Section 625 unless, at the detention hearing, the juvenile court determines that detention of the minor should be continued, the petition for the offense for which the minor is detained is subsequently sustained, or the minor agrees to a program of supervision pursuant to Section 654. The liability of these persons and estates shall be a joint and several liability.

(b) The county shall limit the charges it seeks to impose to the reasonable costs of support of the minor and shall exclude any costs of incarceration, treatment, or supervision for the protection of society and the minor and the rehabilitation of the minor. In the event that court-ordered child support paid to the county pursuant to subdivision (a) exceeds the amount of the costs authorized by this subdivision and subdivision (a), the county shall either hold the excess in trust for the minor's future needs pursuant to Section 302.52 of Title 45 of the Code of Federal Regulations or, with the approval of the minor's caseworker or probation officer, pay the excess directly to the minor.

(c) It is the intent of the Legislature in enacting this subdivision to protect the fiscal integrity of the county, to protect persons against whom the county seeks to impose liability from excessive charges, to ensure reasonable uniformity throughout the state in the level of liability being imposed, and to ensure that liability is imposed only on persons with the ability to pay. In evaluating a family's financial ability to pay under this section, the county shall take into consideration the family's income, the necessary obligations of the family, and the number of persons dependent upon this income. Except as provided in paragraphs (1), (2), (3), and (4), ''costs of support'' as used in this section means only actual costs incurred by the county for food and food preparation, clothing, personal supplies, and medical expenses, not to exceed a combined maximum cost of fifteen dollars ($15) per day, except that:

(1) The maximum cost of fifteen dollars ($15) per day shall be adjusted every third year beginning January 1, 1988, to reflect the percentage change in the calendar year annual average of the California Consumer Price Index, All Urban Consumers, published by the Department of Industrial Relations, for the three-year period.

(2) No cost for medical expenses shall be imposed by the county until the county has first exhausted any eligibility the minor may have under private insurance coverage, standard or medically indigent Medi-Cal coverage, and the Robert W. Crown California Children's Services Act (Article 2 (commencing with Section 248) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code).

(3) In calculating the cost of medical expenses, the county shall not charge in excess of 100 percent of the AFDC fee-for-service average Medi-Cal payment for that county for that fiscal year as calculated by the State Department of Health Services; however, if a minor has extraordinary medical or dental costs that are not met under any of the coverages listed in paragraph (2), the county may impose these additional costs.

(4) For those placements of a minor subject to this section in which an AFDC–FC grant is made, the local child support agency shall, subject to Sections 17550 and 17552 of the Family Code, seek an order pursuant

to Section 17400 of the Family Code and the statewide child support guideline in effect in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 of the Family Code. For purposes of determining the correct amount of support of a minor subject to this section, the rebuttable presumption set forth in Section 4057 of the Family Code is applicable. This paragraph shall be implemented consistent with subdivision (a) of Section 17415 of the Family Code.

(d) Notwithstanding subdivision (a), the father, mother, spouse, or other person liable for the support of the minor, the estate of that person, or the estate of the minor, shall not be liable for the costs described in this section if a petition to declare the minor a dependent child of the court pursuant to Section 300 is dismissed at or before the jurisdictional hearing.

(e) Notwithstanding subdivision (a), the father, mother, spouse, or other person liable for the support of a minor shall not be liable for the costs of support of that minor while the minor is temporarily placed or detained in any institution or other place pursuant to Section 625 or is committed to any institution or other place pursuant to an order of the juvenile court, if the minor is placed or detained because he or she is found by a court to have committed a crime against that person. Nothing in this subdivision shall be construed to extinguish a child support obligation between private parties.

SEC. 5. The Department of Child Support Services and the State Department of Social Services shall submit to the Governor and Legislature, on or before October 1, 2003, reports, which may be combined into a single report, on the results of the provisions of this act. The Department of Child Support Services report shall include, but is not limited to, the number of cases in which child support debt is compromised and the amount of debt that was incurred as a result of:

(a) AFDC-FC payments made pursuant to Article 5 (commencing with Section 11400) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(b) CalWORKs payments made pursuant to Sections 11203 and 11367 of the Welfare and Institutions Code.

SEC. 6. The provisions of Section 17415 of the Family Code, Section 903 of the Welfare and Institutions Code, as amended by this act, and the provisions of Sections 17550 and 17552 of the Family Code, as added by this act, shall be implemented only to the extent that federal financial participation is not reduced for the AFDC-FC program and the CalWORKs program.

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.

CHAPTER 464

An act to add Section 2028 to the Business and Professions Code, relating to the healing arts.

[Approved by Governor October 2, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. (a) The Legislature finds, based upon a report entitled ''To Err is Human, Building a Safer Health System,'' a report issued in 1999 by the Institute of Medicine, that in 1993, approximately 7,000 deaths occurred in the United States as a result of medication errors.

(b) The Legislature further finds, based on information from the Institute for Safe Medicine Practices, the following:

(1) Of the three billion prescriptions issued each year in the United States, nearly all of them are handwritten by the physician and surgeon issuing the prescription.

(2) Illegible prescriptions result in more than 150 million inquiries each year by pharmacists for clarification from the physician and surgeon who issued the prescription.

(3) While the technology exists for the electronic transmission of prescriptions, less than 5 percent of physicians and surgeons use this technology to prescribe medication.

SEC. 2. Section 2028 is added to the Business and Professions Code, to read:

2028. (a) The Medical Board of California shall consult with the California State Board of Pharmacy and commission a study and report its results to the Legislature on or before January 1, 2003, on the electronic transmission of prescriptions by physicians and surgeons.

(b) This report shall include recommendations on the following matters:

(1) Whether the electronic transmission of prescriptions should be encouraged.

(2) Methods to encourage physicians and surgeons, health care providers specified in subdivision (a) of Section 4024, and persons licensed to prescribe in another state who meet the requirements

described in subdivision (b) of Section 4005 to issue prescriptions by electronic transmission.

(3) Identification of systems to protect confidential personal and medical information of patients for whom prescriptions are issued using electronic transmission, including, but not limited to, the issuance of digital certification to physicians and surgeons, health care providers specified in subdivision (a) of Section 4024, and persons licensed to prescribe in another state who meet the requirements described in subdivision (b) of Section 4005 to use when transmitting prescriptions electronically.''

(c) Digital certification'' is an electronic signature verifying the identity of the physician and surgeon, health care provider specified in subdivision (a) of Section 4024, or person licensed to prescribe in another state who meets the requirements described in subdivision (b) of Section 4005 who is transmitting the prescription electronically.

CHAPTER 465

An act to add and repeal Section 4000.11 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 3, 2001.]

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

SECTION 1. The Legislature finds and declares that existing California law prohibits rental car companies from renting, for in-state use, cars that are registered in other states. Because of the terrorist activities on September 11, 2001, that grounded all air traffic, and significantly interrupted rail and inter-city bus service, numerous persons throughout the nation have chosen to rent a car as the only viable alternative transportation over long distances.

Accordingly, the number of rental cars driven into California from other states during this crisis has been higher than normal. As a result, the number of California licensed cars that remain available to renters wishing to travel within the state has been reduced. In order to accommodate the greatly increased consumer demand for rental cars, it may be necessary to temporarily suspend the enforcement of those laws that would prohibit the rental of out-of-state cars.

SEC. 2. Section 4000.11 is added to the Vehicle Code, to read:

4000.11. (a) Notwithstanding any other provision of law, a rental company, as defined in paragraph (1) of subdivision (a) of Section 1936 of the Civil Code, that has been in continuous operation for the two years immediately preceding the effective date of the act that added this section, may rent for use in this state during the period of September 11, 2001 to December 31, 2001, inclusive, a passenger vehicle that is registered in another state if the vehicle's model year is 2000, 2001, or 2002.

(b) Subdivision (a) shall become operative only if both of the following occur:

(1) The Director of Motor Vehicles makes a written finding that the implementation of subdivision (a) is necessary to ensure that there is a sufficient and stable supply of rental cars available in California.

(2) The Executive Officer of the State Air Resources Board makes a written finding that the implementation of subdivision (a) will not result in a significant adverse impact upon air quality.

(c) 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. 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, at the earliest possible time, that it is possible to accommodate the greatly increased consumer demand for rental cars that has resulted from recent terrorist activities that have grounded all air traffic, it is necessary that this act take effect immediately.

CHAPTER 466

An act to add and repeal Sections 1102.18 and 1940.7.5 of the Civil Code, relating to controlled substance releases.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 1102.18 is added to the Civil Code, to read:

1102.18. (a) For purposes of this section, the following definitions shall apply:

(1) ''Illegal controlled substance'' means a drug, substance, or immediate precursor listed in any schedule contained in Section 11054,

11055, 11056, 11057, or 11058 of the Health and Safety Code, or an emission or waste material resulting from the unlawful manufacture or attempt to manufacture an illegal controlled substance. An ''illegal controlled substance'' does not include, for purposes of this section, marijuana.

(2) ''Release'' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of an illegal controlled substance in a structure or into the environment.

(b) (1) Any owner of residential real property who knows, as provided in paragraph (2), that any release of an illegal controlled substance has come to be located on or beneath that real property shall, prior to the sale of the real property by that owner, give written notice of that condition to the buyer pursuant to Section 1102.6 by checking ''yes'' in question IC1 of the Real Estate Transfer Disclosure Statement contained in that section and attaching a copy of any notice received from law enforcement or any other entity, such as the Department of Toxic Substances Control, the county health department, the local environmental health officer, or a designee, advising the owner of the release on the property.

(2) For purposes of this subdivision, a seller's knowledge of the condition is established by the receipt of a notice specified in paragraph (1) or by actual knowledge of the condition from a source independent of the notice.

(3) If the seller delivers the disclosure information required by paragraph (1), delivery shall be deemed legally adequate for purposes of informing the prospective buyer of that condition, and the seller is not required to provide any additional disclosure of that information.

(4) Failure of the owner to provide written notice to the buyer when required by this subdivision shall subject the owner to actual damages and any other remedies provided by law. In addition, if the owner has actual knowledge of the presence of any release of an illegal controlled substance and knowingly and willfully fails to provide written notice to the buyer, as required by this subdivision, the owner is liable for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation, in addition to any other damages provided by law.

(c) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 2. Section 1940.7.5 is added to the Civil Code, to read:

1940.7.5. (a) For purposes of this section, the following definitions shall apply:

(1) ''Illegal controlled substance'' means a drug, substance, or immediate precursor listed in any schedule contained in Section 11054,

11055, 11056, 11057, or 11058 of the Health and Safety Code, or an emission or waste material resulting from the unlawful manufacture or attempt to manufacture an illegal controlled substance. An ''illegal controlled substance'' does not include, for purposes of this section, marijuana.

(2) ''Release'' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of an illegal controlled substance in a structure or into the environment.

(b) (1) The owner of a residental dwelling unit who knows, as provided in paragraph (2), that any release of an illegal controlled substance has come to be located on or beneath that dwelling unit shall give written notice to the prospective tenant prior to the execution of a rental agreement by providing to a prospective tenant a copy of any notice received from law enforcement or any other entity, such as the Department of Toxic Substances Control, the county health department, the local environmental health officer, or a designee, advising the owner of that release on the property.

(2) For purposes of this subdivision, the owner's knowledge of the condition is established by the receipt of a notice specified in paragraph (1) or by actual knowledge of the condition from a source independent of the notice.

(3) If the owner delivers the disclosure information required by paragraph (1), the delivery shall be deemed legally adequate for purposes of informing the prospective tenant of that condition, and the owner is not required to provide any additional disclosure of that information.

(4) Failure of the owner to provide written notice to a prospective tenant when required by this subdivision shall subject the owner to actual damages and any other remedies provided by law. In addition, if the owner has actual knowledge of the presence of any release of an illegal controlled substance and knowingly and willfully fails to provide written notice to the renter, as required by this subdivision, the owner is liable for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation, in addition to any other damages provided by law.

(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.

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CHAPTER 467

An act to amend Section 14250 of the Penal Code, relating to DNA.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 14250 of the Penal Code is amended to read:

14250. (a) (1) The Department of Justice shall develop a DNA data base for all cases involving the report of an unidentified deceased person or a high-risk missing person.

(2) The data base required in paragraph (1) shall be comprised of DNA data from genetic markers that are appropriate for human identification, but have no capability to predict biological function other than gender. These markers shall be selected by the department and may change as the technology for DNA typing progresses. The results of DNA typing shall be compatible with and uploaded into the CODIS DNA data base established by the Federal Bureau of Investigation. The sole purpose of this data base shall be to identify missing persons and shall be kept separate from the data base established under Chapter 6 (commencing with Section 295) of Title 9 of Part 1.

(3) The Department of Justice shall compare DNA samples taken from the remains of unidentified deceased persons with DNA samples taken from personal articles belonging to the missing person, or from the parents or appropriate relatives of high-risk missing persons.

(4) For the purpose of this data base, ''high-risk missing person'' means a person missing as a result of a stranger abduction, a person missing under suspicious circumstances, a person missing under unknown circumstances, or where there is reason to assume that the person is in danger, or deceased, and that person has been missing more than 30 days, or less than 30 days in the discretion of the investigating agency.

(b) The department shall develop standards and guidelines for the preservation and storage of DNA samples. Any agency that is required to collect samples from unidentified remains for DNA testing shall follow these standards and guidelines. These guidelines shall address all scientific methods used for the identification of remains, including DNA, anthropology, odontology, and fingerprints.

(c) (1) A coroner shall collect samples for DNA testing from the remains of all unidentified persons and shall send those samples to the Department of Justice for DNA testing and inclusion in the DNA data bank. After the department has taken a sample from the remains for DNA

analysis and analyzed it, the remaining evidence shall be returned to the appropriate local coroner.

(2) After a report has been made of a person missing under high-risk circumstances, the responsible investigating law enforcement agency shall inform the parents or other appropriate relatives that they may give a voluntary sample for DNA testing or may collect a DNA sample from a personal article belonging to the missing person if available. The samples shall be taken by the appropriate law enforcement agency in a manner prescribed by the Department of Justice. The responsible investigating law enforcement agency shall wait no longer than 30 days after a report has been made to inform the parents or other relatives of their right to give a sample.

(3) The Department of Justice shall develop a standard release form that authorizes a mother, father, or other relative to voluntarily provide the sample. The release shall explain that DNA is to be used only for the purpose of identifying the missing person and that the DNA sample and profile will be destroyed upon request. No incentive or coercion shall be used to compel a parent or relative to provide a sample.

(4) The Department of Justice shall develop a model kit that law enforcement shall use when taking samples from parents and relatives.

(5) Before submitting the sample to the department for analysis, law enforcement shall reverify the status of the missing person. After 30 days has elapsed from the date the report was filed, law enforcement shall send the sample to the department for DNA testing and inclusion in the DNA data base, with a copy of the crime report, and any supplemental information.

(6) All retained samples and DNA extracted from a living person, and profiles developed therefrom, shall be used solely for the purpose of identification of the deceased's remains. All samples and DNA extracted from a living person, and profiles developed therefrom, shall be destroyed after a positive identification with the deceased's remains is made and a report is issued, unless any of the following has occurred:

(A) The coroner has made a report to a law enforcement agency pursuant to Section 27491.1 of the Government Code, that he or she has a reasonable ground to suspect that the identified person's death has been occasioned by another by criminal means.

(B) A law enforcement agency makes a determination that the identified person's death has been occasioned by another by criminal means.

(C) The evidence is needed in an active criminal investigation to determine whether the identified person's death has been occasioned by another by criminal means.

(D) A governmental entity is required to retain the material pursuant to Section 1417.9.

(7) Notwithstanding any other provisions of this section, upon the request of any living person who submits his or her DNA sample and profile pursuant to this section, including the parent or guardian of a child who submits a DNA sample of the child, the DNA sample shall be removed from the DNA data base.

(d) All DNA samples and profiles developed therefrom shall be confidential and shall only be disclosed to personnel of the Department of Justice, law enforcement officers, coroners, medical examiners, district attorneys, and persons who need access to a DNA sample for purposes of the prosecution or defense of a criminal case, except that a law enforcement officer or agency may publicly disclose the fact of a DNA profile match after taking reasonable measures to first notify the family of an unidentified deceased person or the family of a high-risk missing person that there has been an identification.

(e) All DNA, forensic identification profiles, and other identification information retained by the Department of Justice pursuant to this section are exempt from any law requiring disclosure of information to the public.

(f) (1) Any person who knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, or for any purpose other than for identification or for use in a criminal investigation, prosecution, or defense, is guilty of a misdemeanor.

(2) A person who collects, processes, or stores DNA or DNA samples from a living person that are used for DNA testing pursuant to this section who does either of the following is liable in civil damages to the donor of the DNA in the amount of five thousand dollars ($5,000) for each violation, plus attorney's fees and costs:

(A) Fails to destroy samples or DNA extracted from a living person pursuant to paragraph (6) of subdivision (c).

(B) Discloses DNA samples in violation of subdivision (d).

(g) (1) If a disclosure or failure to destroy samples described in paragraph (2) of subdivision (f) is made by an employee of the Department of Justice, the department shall be liable for those actions of its employee.

(2) Notwithstanding any other law, the remedy in this section shall be the sole and exclusive remedy against the department and its employees available to the donor of the DNA against the department and its employees.

(3) The department employee disclosing DNA or other forensic identification information or otherwise violating this section shall be absolutely immune from civil liability under this or any other law.

(h) It is not an unauthorized disclosure or violation of this section to release DNA and other forensic identification information as part of a

judicial or administrative proceeding, to a jury or grand jury, or in a document filed with a court or administrative agency, or for this information to become part of the public transcript or record of proceedings.

(i) In order to maintain computer system security, the computer software and data base structures used by the DNA laboratory of the Department of Justice to implement this chapter are confidential.

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.

CHAPTER 468

An act to amend Sections 13010.5 and 13012 of, and to add Section 13012.5 to, the Penal Code, relating to criminal statistics, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

I am signing Senate Bill 314, however, I am vetoing Section 4 of the bill which would appropriate $75,000 from the Controller for disbursement to the Department of Justice in order to implement the provisions of this bill.

I believe that the inclusion of statistical data related to minors who are subject to the jurisdiction of an adult criminal court in the Department of Justice's annual report would be beneficial in order to assess the public safety impact and fiscal consequences of trying minors as adults. However, due to the economic situation facing the State, the Department of Justice should fund the implementation of this bill through the $350,000 of federal funding that is available from the Office of Criminal Justice Planning and through existing resources of the Department.

GRAY DAVIS, Governor

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

SECTION 1. Section 13010.5 of the Penal Code is amended to read:

13010.5. The department shall collect data pertaining to the juvenile justice system for statistical purposes. This information shall serve to assist the department in complying with the reporting requirement of subdivisions (c) and (d) of Section 13012, measuring the extent of

juvenile delinquency, determining the need for and effectiveness of relevant legislation, and identifying long-term trends in juvenile delinquency.

SEC. 2. Section 13012 of the Penal Code is amended to read:

13012. The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

(a) The amount and the types of offenses known to the public authorities.

(b) The personal and social characteristics of criminals and delinquents.

(c) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.

(d) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including those in the juvenile justice system, in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.

(e) The number of citizens' complaints received by law enforcement agencies under Section 832.5. These statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the department to give adequate interpretation of the statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution, and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall also include statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

SEC. 3. Section 13012.5 is added to the Penal Code, to read:

13012.5. (a) The annual report published by the department under Section 13010 shall, in regard to the contents required by subdivision (d) of Section 13012, include the following statewide information:

(1) The annual number of fitness hearings held in the juvenile courts under Section 707 of the Welfare and Institutions Code, and the outcomes of those hearings including orders to remand to adult criminal court, cross-referenced with information about the age, gender, ethnicity, and offense of the minors whose cases are the subject of those fitness hearings.

(2) The annual number of minors whose cases are filed directly in adult criminal court under Sections 602.5 and 707 of the Welfare and Institutions Code, cross-referenced with information about the age, gender, ethnicity, and offense of the minors whose cases are filed directly to the adult criminal court.

(3) The outcomes of cases involving minors who are prosecuted in adult criminal courts, regardless of how adult court jurisdiction was initiated, including whether the minor was acquitted or convicted, or whether the case was dismissed and returned to juvenile court, including sentencing outcomes, cross-referenced with the age, gender, ethnicity, and offense of the minors subject to these court actions.

(b) The department's annual report published under Section 13010 shall include the information described in subdivision (d) of Section 13012, as further delineated by this section, beginning with the report due on July 1, 2003, for the preceding calendar year.

SEC. 4. The sum of seventy-five thousand dollars ($75,000) is hereby appropriated from the General Fund to the Controller for disbursement to the Department of Justice for the purpose of this act.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the department to collect the information required under these provisions by the reporting deadline, it is necessary for this act to take effect immediately as an urgency statute.

CHAPTER 469

An act to add and repeal Chapter 5.2 (commencing with Section 13366) of Division 7 of the Water Code, relating to water quality, and making an appropriation therefor.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

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

(a) San Diego Bay is listed by the state as an impaired water body, and copper is a constituent of concern. One study shows that vessel hull paints are the largest sources of copper loading in San Diego Bay, with more than one-half of the total copper coming from recreational boats. Conservative estimates indicate that most of the bay's eight thousand

recreational boats use copper-based antifouling paint. The copper loading problem is particularly acute in the Shelter Island Yacht Basin of the bay, resulting in the preparation of a Total Daily Maximum Load (TDML) assessment by the San Diego Regional Water Quality Control Board.

(b) Existing, viable nontoxic alternatives to copper-based coatings lack widespread use because of limited availability, unfamiliarity, and concerns about cost. As part of an effort to improve the recreational boating community's access to superior alternatives, a group of diverse stakeholders is coming together to develop incentives for San Diego boat owners, boat repair companies, and marinas to apply alternative boat coatings.

SEC. 2. Chapter 5.2 (commencing with Section 13366) is added to Division 7 of the Water Code, to read:

CHAPTER 5.2. SAN DIEGO ADVISORY COMMITTEE FOR ENVIRONMENTALLY SUPERIOR ANTIFOULING PAINTS

13366. (a) The San Diego Advisory Committee for Environmentally Superior Antifouling Paints is hereby established, for the purpose of making recommendations and advising in the preparation of a report by the University of California, or a consultant, to identify incentives necessary to ensure that nontoxic alternatives to metal-based antifouling hull coatings are used for recreational vessels. The report shall consider, but need not be limited to, all of the following:

(1) Product costs, including, but not limited to, product costs of noncoating alternatives.

(2) Hull preparation, including, but not limited to, initial costs, lifespan costs, maintenance, and repairs.

(3) Market-based alternatives, including, but not limited to, differential pricing.

(4) The term of any incentives to encourage the availability and use of alternatives.

(5) Criteria for evaluating the effectiveness of any incentives.

(b) The committee members shall be appointed by the Board of Port Commissioners of the San Diego Unified Port District for two-year terms. The membership of the committee should include, but need not be limited to, all of the following:

(1) A representative of the San Diego Association of Yacht Clubs who resides in San Diego.

(2) A representative of the San Diego Port Tenants Association.

(3) A marina owner or operator in the San Diego Bay.

(4) A representative of the San Diego Unified Port District.

(5) A representative of the Sea Grant Extension Program.

(6) A representative of the Southern California Professional Divers Association.

(7) A representative of the Environmental Health Coalition in San Diego County.

(8) A representative of the boatyard industry operating in San Diego County.

(9) A representative of the San Diego Regional Water Quality Control Board.

(10) A recreational boat owner who resides in the City of San Diego.

(11) A representative of the Department of Boating and Waterways.

(c) The committee may include one nonvoting representative of each of the following:

(1) The United States Navy.

(2) The Department of Pesticide Regulation.

(d) Committee members shall not be compensated for their services or any expenses incurred in the performance of their duties pursuant to this chapter.

(e) The report required under subdivision (a) shall be submitted on or before December 31, 2002, to all of the following:

(1) The Legislature.

(2) The San Diego Regional Water Quality Control Board.

(3) The Department of Boating and Waterways.

(f) This section shall only apply to the University of California to the extent the regents of the university elect to make the section applicable.

13367. This chapter 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. 3. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the Harbors and Watercraft Revolving Fund to the Department of Boating and Waterways, to provide funds to the University of California, subject to the agreement of the university, or a consultant, for the purpose of preparing the incentives report required under Section 13366 of the Water Code. The report shall be prepared under the direction of the San Diego Advisory Committee for Environmentally Superior Antifouling Paints.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

CHAPTER 470

An act to amend Section 3058.65 of the Penal Code, and to amend Section 16507 of the Welfare and Institutions Code, relating to parole.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 3058.65 of the Penal Code is amended to read:

3058.65. (a) (1) Whenever any person confined in the state prison is serving a term for the conviction of child abuse, pursuant to Section 273a, 273ab, 273d, any sex offense specified as being perpetrated against a minor, or an act of domestic violence, or as ordered by a court, the Board of Prison Terms, with respect to inmates sentenced pursuant to subdivision (b) of Section 1168, or the Department of Corrections, with respect to inmates sentenced pursuant to Section 1170, shall notify the following parties that the person is scheduled to be released on parole, or rereleased following a period of confinement pursuant to a parole revocation without a new commitment, as specified in subdivision (b):

(A) The immediate family of the parolee who requests notification and provides the department with a current address.

(B) A county child welfare services agency that requests notification pursuant to Section 16507 of the Welfare and Institutions Code.

(2) For the purposes of this paragraph, ''immediate family of the parolee'' means the parents, siblings, and spouse of the parolee.

(b) (1) The notification shall be made by mail at least 45 days prior to the scheduled release date, except as provided in paragraph (2). In all cases, the notification shall include the name of the person who is scheduled to be released, the terms of that person's parole, whether or not that person is required to register with local law enforcement, and the community in which that person will reside. The notification shall specify the office within the Department of Corrections that has the authority to make the final determination and adjustments regarding parole location decisions.

(2) When notification cannot be provided within the 45 days due to the unanticipated release date change of an inmate as a result of an order from the court, an action by the Board of Prison Terms, the granting of an administrative appeal, or a finding of not guilty or dismissal of a disciplinary action, that affects the sentence of the inmate, or due to a modification of the department's decision regarding the community into which the person is scheduled to be released pursuant to paragraph (3), the department shall provide notification to the parties and agencies

specified in subdivision (a) as soon as practicable, but in no case less than 24 hours after the final decision is made regarding the location where the parolee will be released.

(3) Those agencies receiving the notice referred to in this subdivision may provide written comment to the board or department regarding the impending release. Agencies that choose to provide written comments shall respond within 30 days prior to the inmate's scheduled release, unless an agency received less than 45 days' notice of the impending release, in which case the agency shall respond as soon as practicable prior to the scheduled release. Those comments shall be considered by the board or department which may, based on those comments, modify its decision regarding the community in which the person is scheduled to be released. The board or department shall respond in writing not less than 15 days prior to the scheduled release with a final determination as to whether to adjust the parole location and documenting the basis for its decision, unless the department received comments less than 30 days prior to the impending release, in which case the department shall respond as soon as practicable prior to the scheduled release. The comments shall become a part of the inmate's file.

(c) In no case shall the notice required by this section be later than the day the person is released on parole.

SEC. 2. Section 16507 of the Welfare and Institutions Code is amended to read:

16507. (a) Family reunification services shall be provided or arranged for by county welfare department staff in order to reunite the child separated from his or her parent because of abuse, neglect, or exploitation. These services shall not exceed 12 months except as provided in subdivision (a) of Section 361.5 and subdivision (c) of Section 366.3. Family reunification services shall be available without regard to income to families whose child has been adjudicated or is in the process of being adjudicated a dependent child of the court under the provisions of Section 300. Family reunification services shall include a plan for visitation of the child by his or her grandparents, where the visitation is in the best interests of the child and will serve to maintain and strengthen the family relationships of the child.

(b) Family reunification services shall only be provided when a child has been placed in out-of-home care, or is in the care of a previously noncustodial parent under the supervision of the juvenile court.

(c) When a minor has been placed in foster care with a nonparent, family reunification services may be provided to one or both parents.

(d) When a county child welfare services agency is providing one parent with reunification services and the other parent is serving a prison term for the conviction of child abuse, pursuant to Section 273a, 273ab, or 273d of the Penal Code, any sex offense specified as being perpetrated

against a minor, or an act of domestic violence, the county child welfare services agency may request that the Board of Prison Terms, with respect to inmates sentenced pursuant to subdivision (b) of Section 1168 of the Penal Code, or the Department of Corrections, with respect to inmates sentenced pursuant to Section 1170 of the Penal Code, provide the agency, during the time in which reunification services are being provided, with notification that the person is scheduled to be released on parole, or rereleased following a period of confinement pursuant to a parole revocation without a new commitment.

CHAPTER 471

An act to amend, repeal, and add Section 33334.2 of, and to add and repeal Section 33334.22 of, the Health and Safety Code, relating to housing.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 33334.2 of the Health and Safety Code is amended to read:

33334.2. (a) Not less than 20 percent of all taxes that are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Sections 33334.22 and 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, unless one of the following findings is made annually by resolution:

(1) (A) That no need exists in the community to improve, increase, or preserve the supply of low- and moderate-income housing, including housing for very low income households in a manner that would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, including its share of the regional housing needs of very low income households and persons and families of low or moderate income.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that the community does not have a need to improve, increase, or preserve the supply of low- and

moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(2) (A) That some stated percentage less than 20 percent of the taxes that are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community, including its share of the regional housing needs of persons and families of low-or moderate-income and very low income households, and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that a percentage of less than 20 percent will be sufficient to meet the community's need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(C) For purposes of making the findings specified in this paragraph and paragraph (1), the housing element of the general plan of a city or county shall be current, shall have been submitted to the Department of Housing and Community Development within the applicable time period, and shall be in compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) (A) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of

Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to persons and families of low or moderate income and very low income households, is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need that can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions that are directly related to programs or activities authorized under subdivision (e) of this section.

(C) The authority for making the finding specified in this paragraph shall expire on June 30, 1993, except that the expiration shall not be deemed to impair contractual obligations to bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this paragraph. Agencies that make this finding after June 30, 1993, shall show evidence that the agency entered into the specific contractual obligation with the specific intention of making a finding under this paragraph in order to provide sufficient revenues to pay off the indebtedness.

(b) Within 10 days following the making of a finding under either paragraph (1) or (2) of subdivision (a), the agency shall send the department a copy of the finding, including the factual information supporting the finding and other factual information in the housing element that demonstrates that either (1) the community does not need to increase, improve, or preserve the supply of housing for low- and moderate-income households, including very low income households, or (2) a percentage less than 20 percent will be sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the

department a copy of the finding, including the factual information supporting the finding that the community is making a substantial effort to meet its existing and projected housing needs. Agencies that make this finding after June 30, 1993, shall also submit evidence to the department of its contractual obligations with bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency. If an agency is determined by a court to have knowingly misrepresented any material facts regarding the community's share of its regional housing need for low- and moderate-income housing, including very low income households, or the community's production record in meeting its share of the regional housing need pursuant to the report required by subdivision (b) of Section 65400 of the Government Code, the agency shall be liable for all court costs and plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent of the agency's tax increment revenues to its Low and Moderate Income Housing Fund in each year thereafter.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers, including the following:

(1) Acquire real property or building sites subject to Section 33334.16.

(2) Improve real property or building sites with onsite or offsite improvements, but only if either (A) the improvements are made as part of a program which results in the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements or (B) the agency finds that the improvements are necessary to eliminate a specific condition that jeopardizes the health or safety of existing low- or moderate-income residents.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households

cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments which are assisted or subsidized by public entities and which are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) (1) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(2) (A) The Contra Costa County Redevelopment Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment Project area. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of the City of Walnut Creek only if the agency and the board of supervisors find all of the following:

(i) Both the County of Contra Costa and the City of Walnut Creek have adopted and are implementing complete and current housing elements of their general plans that the department has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(iii) The development to be funded shall not be constructed in an area that currently has more than 50 percent of its population comprised of racial minorities or low-income families.

(iv) The development to be funded shall allow construction of affordable housing closer to a rapid transit station than could be constructed in the unincorporated territory outside the Pleasant Hill BART Station Area Redevelopment Project.

(B) If the agency uses these funds within the incorporated limits of the City of Walnut Creek, all of the following requirements shall apply:

(i) The funds shall be used only for the acquisition of land for, and the design and construction of, the development of housing containing units affordable to low- and moderate-income persons.

(ii) If less than all the units in the development are affordable to low- or moderate-income persons, any agency assistance shall not exceed the amount needed to make the housing affordable to low- or moderate-income persons.

(iii) The units in the development that are affordable to low- or moderate-income persons shall remain affordable for a period of at least 55 years.

(iv) The agency and the City of Walnut Creek shall determine, if applicable, whether Article XXXIV of the California Constitution permits the development.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area that is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(j) 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. 1.3. Section 33334.2 of the Health and Safety Code is amended to read:

33334.2. (a) Not less than 20 percent of all taxes that are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Sections 33334.22 and 50052.5, to persons

and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, that is occupied by these persons and families, unless one of the following findings is made annually by resolution:

(1) (A) That no need exists in the community to improve, increase, or preserve the supply of low- and moderate-income housing, including housing for very low income households in a manner that would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, including its share of the regional housing needs of very low income households and persons and families of low or moderate income.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that the community does not have a need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(2) (A) That some stated percentage less than 20 percent of the taxes that are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community, including its share of the regional housing needs of persons and families of low or moderate income and very low income households, and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that a percentage of less than 20 percent will be sufficient to meet the community's need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning

agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(C) For purposes of making the findings specified in this paragraph and paragraph (1), the housing element of the general plan of a city or county shall be current, shall have been submitted to the Department of Housing and Community Development within the applicable time period, and shall be in compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) (A) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to persons and families of low or moderate income and very low income households that is occupied by these persons and families, is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need that can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions that are directly related to programs or activities authorized under subdivision (e) of this section.

(C) The authority for making the finding specified in this paragraph shall expire on June 30, 1993, except that the expiration shall not be deemed to impair contractual obligations to bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this paragraph. Agencies that make this finding after June 30, 1993, shall

show evidence that the agency entered into the specific contractual obligation with the specific intention of making a finding under this paragraph in order to provide sufficient revenues to pay off the indebtedness.

(b) Within 10 days following the making of a finding under either paragraph (1) or (2) of subdivision (a), the agency shall send the department a copy of the finding, including the factual information supporting the finding and other factual information in the housing element that demonstrates that either (1) the community does not need to increase, improve, or preserve the supply of housing for low- and moderate-income households, including very low income households, or (2) a percentage less than 20 percent will be sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the department a copy of the finding, including the factual information supporting the finding that the community is making a substantial effort to meet its existing and projected housing needs. Agencies that make this finding after June 30, 1993, shall also submit evidence to the department of its contractual obligations with bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency. If an agency is determined by a court to have knowingly misrepresented any material facts regarding the community's share of its regional housing need for low- and moderate-income housing, including very low income households, or the community's production record in meeting its share of the regional housing need pursuant to the report required by subdivision (b) of Section 65400 of the Government Code, the agency shall be liable for all court costs and plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent of the agency's tax increment revenues to its Low and Moderate Income Housing Fund in each year thereafter.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers for the construction, rehabilitation, or preservation of affordable housing for very low, low-, and moderate-income persons or families, including the following:

(1) Acquire real property or building sites subject to Section 33334.16.

(2) Improve real property or building sites with onsite or offsite improvements, but only if both (A) the improvements are part of the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements , and are a reasonable and fundamental component of the housing units, and (B) the agency requires that the units remain available at affordable housing cost to persons and families of very low, low, or moderate income, and are occupied by these persons and families, for the same time period and in the same manner as provided in subdivision (c) and paragraph (2) of subdivision (f) of Section 33334.3.

If the newly constructed or rehabilitated housing units are part of a larger project and the agency improves or pays for onsite or offsite improvements pursuant to the authority in this subdivision, the agency shall pay only a portion of the total cost of the onsite or offsite improvement. The maximum percentage of the total cost of the improvement paid for by the agency shall be determined by dividing the number of housing units that are affordable to low- or moderate-income persons by the total number of housing units, if the project is a housing project, or by dividing the cost of the affordable housing units by the total cost of the project, if the project is not a housing project.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments that are assisted or subsidized by public entities and that are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in

this section shall be construed as limiting in any way the requirements of that section.

(g) (1) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(2) (A) The Contra Costa County Redevelopment Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment Project area. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of the City of Walnut Creek only if the agency and the board of supervisors find all of the following:

(i) Both the County of Contra Costa and the City of Walnut Creek have adopted and are implementing complete and current housing elements of their general plans that the department has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(iii) The development to be funded shall not be constructed in an area that currently has more than 50 percent of its population comprised of racial minorities or low-income families.

(iv) The development to be funded shall allow construction of affordable housing closer to a rapid transit station than could be constructed in the unincorporated territory outside the Pleasant Hill BART Station Area Redevelopment Project.

(B) If the agency uses these funds within the incorporated limits of the City of Walnut Creek, all of the following requirements shall apply:

(i) The funds shall be used only for the acquisition of land for, and the design and construction of, the development of housing containing units affordable to low- and moderate-income persons.

(ii) If less than all the units in the development are affordable to low- or moderate-income persons, any agency assistance shall not exceed the

amount needed to make the housing affordable to low- or moderate-income persons.

(iii) The units in the development that are affordable to low- or moderate-income persons shall remain affordable for a period of at least 55 years.

(iv) The agency and the City of Walnut Creek shall determine, if applicable, whether Article XXXIV of the California Constitution permits the development.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area that is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(j) 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. 1.5. Section 33334.2 of the Health and Safety Code is amended to read:

33334.2. (a) Not less than 20 percent of all taxes that are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Sections 33334.22 and 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, unless one of the following findings is made annually by resolution:

(1) (A) That no need exists in the community to improve, increase, or preserve the supply of low- and moderate-income housing, including housing for very low income households in a manner that would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, including its share of the regional housing needs of very low income households and persons and families of low or moderate income.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that the community does not

have a need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(2) (A) That some stated percentage less than 20 percent of the taxes that are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community, including its share of the regional housing needs of persons and families of low or moderate income and very low income households, and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that a percentage of less than 20 percent will be sufficient to meet the community's need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(C) For purposes of making the findings specified in this paragraph and paragraph (1), the housing element of the general plan of a city or county shall be current, shall have been submitted to the department within the applicable time period, and shall be in compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) (A) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of

Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to persons and families of low or moderate income and very low income households, is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need that can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions that are directly related to programs or activities authorized under subdivision (e) .

(C) The authority for making the finding specified in this paragraph shall expire on June 30, 1993, except that the expiration shall not be deemed to impair contractual obligations to bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this paragraph. Agencies that make this finding after June 30, 1993, shall show evidence that the agency entered into the specific contractual obligation with the specific intention of making a finding under this paragraph in order to provide sufficient revenues to pay off the indebtedness.

(b) Within 10 days following the making of a finding under either paragraph (1) or (2) of subdivision (a), the agency shall send the department a copy of the finding, including the factual information supporting the finding and other factual information in the housing element that demonstrates that either (1) the community does not need to increase, improve, or preserve the supply of housing for low- and moderate-income households, including very low income households, or (2) a percentage less than 20 percent will be sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the

department a copy of the finding, including the factual information supporting the finding that the community is making a substantial effort to meet its existing and projected housing needs. Agencies that make this finding after June 30, 1993, shall also submit evidence to the department of its contractual obligations with bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency. If an agency is determined by a court to have knowingly misrepresented any material facts regarding the community's share of its regional housing need for low- and moderate-income housing, including very low income households, or the community's production record in meeting its share of the regional housing need pursuant to the report required by subdivision (b) of Section 65400 of the Government Code, the agency shall be liable for all court costs and plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent of the agency's tax increment revenues to its Low and Moderate Income Housing Fund in each year thereafter.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers, including the following:

(1) Acquire real property or building sites subject to Section 33334.16.

(2) Improve real property or building sites with onsite or offsite improvements, but only if either (A) the improvements are made as part of a program which results in the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements or (B) the agency finds that the improvements are necessary to eliminate a specific condition that jeopardizes the health or safety of existing low- or moderate-income residents.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households

cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments which are assisted or subsidized by public entities and which are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) (1) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(2) (A) The Contra Costa County Redevelopment Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment Project area. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of the City of Walnut Creek only if the agency and the board of supervisors find all of the following:

(i) Both the County of Contra Costa and the City of Walnut Creek have adopted and are implementing complete and current housing elements of their general plans that the department has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(iii) The development to be funded shall not be constructed in an area that currently has more than 50 percent of its population comprised of racial minorities or low-income families.

(iv) The development to be funded shall allow construction of affordable housing closer to a rapid transit station than could be constructed in the unincorporated territory outside the Pleasant Hill BART Station Area Redevelopment Project.

(B) If the agency uses these funds within the incorporated limits of the City of Walnut Creek, all of the following requirements shall apply:

(i) The funds shall be used only for the acquisition of land for, and the design and construction of, the development of housing containing units affordable to low- and moderate-income persons.

(ii) If less than all the units in the development are affordable to low- or moderate-income persons, any agency assistance shall not exceed the amount needed to make the housing affordable to low- or moderate-income persons.

(iii) The units in the development that are affordable to low- or moderate-income persons shall remain affordable for a period of at least 55 years.

(iv) The agency and the City of Walnut Creek shall determine, if applicable, whether Article XXXIV of the California Constitution permits the development.

(3) (A) The Orange County Development Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of any city within the County of Orange. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of a city only if the agency and the board of supervisors find all of the following:

(i) Both the County of Orange and the city have adopted and are implementing complete and current housing elements of their general plans that the department has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(iii) The development to be funded shall be a rental housing development containing units affordable to lower income households or very low income households, as defined in Sections 50079.5 and 50105.

(iv) The development is in an area with a need for additional affordable housing.

(v) If applicable, Article XXXIV of the California Constitution permits the development.

(vi) The city in which the development is to be constructed has certified to the agency that the city's redevelopment agency, if one exists, is not subject to sanctions pursuant to subdivision (e) of Section 33334.12 for failure to expend or encumber a housing fund excess surplus.

(B) If the agency uses these funds within the incorporated limits of a city, all of the following requirements shall apply:

(i) The funds shall be used only for the acquisition of land for, and the design and construction of, housing containing units affordable to lower income households or very low income households, as defined in Sections 50079.5 and 50105, or for the acquisition or rehabilitation of publicly assisted rental housing that is threatened with conversion to market rates.

(ii) If less than all the units in the development are affordable to lower income households or very low income households, any agency assistance shall not exceed the amount needed to make the housing affordable to lower income households and very low income households.

(iii) The units in the development that are affordable to lower income households or very low income households shall remain affordable for a period of at least 55 years. Compliance with this requirement shall be ensured by the execution and recordation of covenants and restrictions that, notwithstanding any other provision of law, shall run with the land.

(iv) No development shall be located in a census tract where more than 50 percent of its population is very low income.

(v) Assisted developments shall be located on sites suitable for multifamily housing near public transportation.

(vi) Developed units shall not be treated as meeting the regional housing needs allocation under both the city's and county's housing elements.

(vii) The funds shall be used only for developments for which the city in which the development will be constructed has approved the agency's use of funds for the development or has granted land use approvals for the development.

(viii) The aggregate number of units assisted by the county over each five-year period shall include at least 10 percent that are affordable to households earning 30 percent or less of the area median income, and at least 40 percent that are affordable to very low income households.

(C) The Orange County Development Agency shall make diligent efforts to obtain the development of low- and moderate-income housing in unincorporated areas, including in developing areas of the county.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area that is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(j) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless alter enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 1.7. Section 33334.2 of the Health and Safety Code is amended to read:

33334.2. (a) Not less than 20 percent of all taxes that are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Sections 33334.22 and 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, that is occupied by these persons and families, unless one of the following findings is made annually by resolution:

(1) (A) That no need exists in the community to improve, increase, or preserve the supply of low- and moderate-income housing, including housing for very low income households in a manner that would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, including its share of the regional housing needs of very low income households and persons and families of low or moderate income.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that the community does not have a need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This

finding shall not take effect until the agency has complied with subdivision (b) of this section.

(2) (A) That some stated percentage less than 20 percent of the taxes that are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community, including its share of the regional housing needs of persons and families of low or moderate income and very low income households, and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that a percentage of less than 20 percent will be sufficient to meet the community's need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(C) For purposes of making the findings specified in this paragraph and paragraph (1), the housing element of the general plan of a city or county shall be current, shall have been submitted to the department within the applicable time period, and shall be in compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) (A) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to persons and families of low or moderate income and very low income households that is occupied by these persons and families, is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and

Moderate Income Housing Fund may be used. The legislative body shall consider the need that can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions that are directly related to programs or activities authorized under subdivision (e) .

(C) The authority for making the finding specified in this paragraph shall expire on June 30, 1993, except that the expiration shall not be deemed to impair contractual obligations to bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this paragraph. Agencies that make this finding after June 30, 1993, shall show evidence that the agency entered into the specific contractual obligation with the specific intention of making a finding under this paragraph in order to provide sufficient revenues to pay off the indebtedness.

(b) Within 10 days following the making of a finding under either paragraph (1) or (2) of subdivision (a), the agency shall send the department a copy of the finding, including the factual information supporting the finding and other factual information in the housing element that demonstrates that either (1) the community does not need to increase, improve, or preserve the supply of housing for low- and moderate-income households, including very low income households, or (2) a percentage less than 20 percent will be sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the department a copy of the finding, including the factual information supporting the finding that the community is making a substantial effort to meet its existing and projected housing needs. Agencies that make this finding after June 30, 1993, shall also submit evidence to the department of its contractual obligations with bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence

in light of the entire record before the agency. If an agency is determined by a court to have knowingly misrepresented any material facts regarding the community's share of its regional housing need for low- and moderate-income housing, including very low income households, or the community's production record in meeting its share of the regional housing need pursuant to the report required by subdivision (b) of Section 65400 of the Government Code, the agency shall be liable for all court costs and plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent of the agency's tax increment revenues to its Low and Moderate Income Housing Fund in each year thereafter.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers for the construction, rehabilitation, or preservation of affordable housing for very low, low-, and moderate-income persons or families, including the following:

(1) Acquire real property or building sites subject to Section 33334.16.

(2) Improve real property or building sites with onsite or offsite improvements, but only if both (A) the improvements are part of the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements , and are a reasonable and fundamental component of the housing units, and (B) the agency requires that the units remain available at affordable housing cost to persons and families of very low, low, or moderate income, and are occupied by these persons and families, for the same time period and in the same manner as provided in subdivision (c) and paragraph (2) of subdivision (f) of Section 33334.3.

If the newly constructed or rehabilitated housing units are part of a larger project and the agency improves or pays for onsite or offsite improvements pursuant to the authority in this subdivision, the agency shall pay only a portion of the total cost of the onsite or offsite improvement. The maximum percentage of the total cost of the improvement paid for by the agency shall be determined by dividing the number of housing units that are affordable to low- or moderate-income persons by the total number of housing units, if the project is a housing project, or by dividing the cost of the affordable housing units by the total cost of the project, if the project is not a housing project.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments that are assisted or subsidized by public entities and that are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) (1) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(2) (A) The Contra Costa County Redevelopment Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment Project area. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of the City of Walnut Creek only if the agency and the board of supervisors find all of the following:

(i) Both the County of Contra Costa and the City of Walnut Creek have adopted and are implementing complete and current housing elements of their general plans that the department has determined to be in compliance with the requirements of Article 10.6 (commencing with

Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(iii) The development to be funded shall not be constructed in an area that currently has more than 50 percent of its population comprised of racial minorities or low-income families.

(iv) The development to be funded shall allow construction of affordable housing closer to a rapid transit station than could be constructed in the unincorporated territory outside the Pleasant Hill BART Station Area Redevelopment Project.

(B) If the agency uses these funds within the incorporated limits of the City of Walnut Creek, all of the following requirements shall apply:

(i) The funds shall be used only for the acquisition of land for, and the design and construction of, the development of housing containing units affordable to low- and moderate-income persons.

(ii) If less than all the units in the development are affordable to low- or moderate-income persons, any agency assistance shall not exceed the amount needed to make the housing affordable to low- or moderate-income persons.

(iii) The units in the development that are affordable to low- or moderate-income persons shall remain affordable for a period of at least 55 years.

(iv) The agency and the City of Walnut Creek shall determine, if applicable, whether Article XXXIV of the California Constitution permits the development.

(3) (A) The Orange County Development Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of any city within the County of Orange. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of a city only if the agency and the board of supervisors find all of the following:

(i) Both the County of Orange and the city have adopted and are implementing complete and current housing elements of their general plans that the department has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(iii) The development to be funded shall be a rental housing development containing units affordable to lower income households or very low income households, as defined in Sections 50079.5 and 50105.

(iv) The development is in an area with a need for additional affordable housing.

(v) If applicable, Article XXXIV of the California Constitution permits the development.

(vi) The city in which the development is to be constructed has certified to the agency that the city's redevelopment agency, if one exists, is not subject to sanctions pursuant to subdivision (e) of Section 33334.12 for failure to expend or encumber a housing fund excess surplus.

(B) If the agency uses these funds within the incorporated limits of a city, all of the following requirements shall apply:

(i) The funds shall be used only for the acquisition of land for, and the design and construction of, housing containing units affordable to lower income households or very low income households, as defined in Sections 50079.5 and 50105, or for the acquisition or rehabilitation of publicly assisted rental housing that is threatened with conversion to market rates.

(ii) If less than all the units in the development are affordable to lower income households or very low income households, any agency assistance shall not exceed the amount needed to make the housing affordable to lower income households and very low income households.

(iii) The units in the development that are affordable to lower income households or very low income households shall remain affordable for a period of at least 55 years. Compliance with this requirement shall be ensured by the execution and recordation of covenants and restrictions that, notwithstanding any other provision of law, shall run with the land.

(iv) No development shall be located in a census tract where more than 50 percent of its population is very low income.

(v) Assisted developments shall be located on sites suitable for multifamily housing near public transportation.

(vi) Developed units shall not be treated as meeting the regional housing needs allocation under both the city's and county's housing elements.

(vii) The funds shall be used only for developments for which the city in which the development will be constructed has approved the agency's use of funds for the development or has granted land use approvals for the development.

(viii) The aggregate number of units assisted by the county over each five-year period shall include at least 10 percent that are affordable to households earning 30 percent or less of the area median income, and at least 40 percent that are affordable to very low income households.

(C) The Orange County Development Agency shall make diligent efforts to obtain the development of low- and moderate-income housing in unincorporated areas, including in developing areas of the county.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area that is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(j) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless alter enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 2. Section 33334.2 is added to the Health and Safety Code, to read:

33334.2. (a) Not less than 20 percent of all taxes that are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, unless one of the following findings is made annually by resolution:

(1) (A) That no need exists in the community to improve, increase, or preserve the supply of low- and moderate-income housing, including housing for very low income households in a manner that would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, including its share of the regional housing needs of very low income households and persons and families of low or moderate income.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that the community does not have a need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on

implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(2) (A) That some stated percentage less than 20 percent of the taxes that are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community, including its share of the regional housing needs of persons and families of low or moderate income and very low income households, and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that a percentage of less than 20 percent will be sufficient to meet the community's need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(C) For purposes of making the findings specified in this paragraph and paragraph (1), the housing element of the general plan of a city or county shall be current, shall have been submitted to the Department of Housing and Community Development within the applicable time period, and shall be in compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) (A) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to persons and families of low or moderate income and very low income households, is equivalent in impact to the

funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need that can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions that are directly related to programs or activities authorized under subdivision (e) of this section.

(C) The authority for making the finding specified in this paragraph shall expire on June 30, 1993, except that the expiration shall not be deemed to impair contractual obligations to bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this paragraph. Agencies that make this finding after June 30, 1993, shall show evidence that the agency entered into the specific contractual obligation with the specific intention of making a finding under this paragraph in order to provide sufficient revenues to pay off the indebtedness.

(b) Within 10 days following the making of a finding under either paragraph (1) or (2) of subdivision (a), the agency shall send the department a copy of the finding, including the factual information supporting the finding and other factual information in the housing element that demonstrates that either (1) the community does not need to increase, improve, or preserve the supply of housing for low- and moderate-income households, including very low income households, or (2) a percentage less than 20 percent will be sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the department a copy of the finding, including the factual information supporting the finding that the community is making a substantial effort to meet its existing and projected housing needs. Agencies that make this finding after June 30, 1993, shall also submit evidence to the department

of its contractual obligations with bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency. If an agency is determined by a court to have knowingly misrepresented any material facts regarding the community's share of its regional housing need for low- and moderate-income housing, including very low income households, or the community's production record in meeting its share of the regional housing need pursuant to the report required by subdivision (b) of Section 65400 of the Government Code, the agency shall be liable for all court costs and plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent of the agency's tax increment revenues to its Low and Moderate Income Housing Fund in each year thereafter.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers, including the following:

(1) Acquire real property or building sites subject to Section 33334.16.

(2) Improve real property or building sites with onsite or offsite improvements, but only if either (A) the improvements are made as part of a program which results in the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements or (B) the agency finds that the improvements are necessary to eliminate a specific condition that jeopardizes the health or safety of existing low- or moderate-income residents.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments which are assisted or subsidized by public entities and which are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) (1) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(2) (A) The Contra Costa County Redevelopment Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment Project area. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of the City of Walnut Creek only if the agency and the board of supervisors find all of the following:

(i) Both the County of Contra Costa and the City of Walnut Creek have adopted and are implementing complete and current housing elements of their general plans that the department has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(iii) The development to be funded shall not be constructed in an area that currently has more than 50 percent of its population comprised of racial minorities or low-income families.

(iv) The development to be funded shall allow construction of affordable housing closer to a rapid transit station than could be

constructed in the unincorporated territory outside the Pleasant Hill BART Station Area Redevelopment Project.

(B) If the agency uses these funds within the incorporated limits of the City of Walnut Creek, all of the following requirements shall apply:

(i) The funds shall be used only for the acquisition of land for, and the design and construction of, the development of housing containing units affordable to low- and moderate-income persons.

(ii) If less than all the units in the development are affordable to low- or moderate-income persons, any agency assistance shall not exceed the amount needed to make the housing affordable to low- or moderate-income persons.

(iii) The units in the development that are affordable to low- or moderate-income persons shall remain affordable for a period of at least 55 years.

(iv) The agency and the City of Walnut Creek shall determine, if applicable, whether Article XXXIV of the California Constitution permits the development.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area that is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(j) This section shall become operative on January 1, 2005.

SEC. 3. Section 33334.22 is added to the Health and Safety Code, to read:

33334.22. (a) The Legislature finds and declares that in order to avoid serious economic hardships and accompanying blight, it is necessary to enact this section, which shall apply only within Santa Cruz County, and which is enacted for the purpose of providing housing assistance to very low, lower, and moderate-income households.

(b) Notwithstanding Section 50052.5, any redevelopment agency within Santa Cruz County may make assistance available from its low- and moderate-income housing fund directly to a homebuyer for the purchase of an owner-occupied home, and for purposes of that assistance and this section, ''affordable housing cost'' shall not exceed the following:

(1) For very low income households, the product of 40 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.

(2) For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 40 percent times 70 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any lower income household that has a gross income that equals or exceeds 70 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that the affordable housing cost not exceed 40 percent of the gross income of the household.

(3) For moderate income households, affordable housing cost shall not exceed the product of 40 percent times 110 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any moderate-income household that has a gross income that exceeds 110 percent of the area median income adjusted for family size, it shall be optional for any state of local funding agency to require that affordable housing cost not exceed 40 percent of the gross income of the household.

(c) Any agency in Santa Cruz County that provides assistance pursuant to this section shall include in the annual report to the Controller, pursuant to Sections 33080 and 33080.1, all of the following information:

(1) The sales prices of homes purchased with assistance from the agency's low and moderate income housing fund for each year from 2000 to 2004, inclusive.

(2) The sales prices of homes purchased and rehabilitated with assistance from the agency's low and moderate income housing fund for each year from 2000 to 2004, inclusive.

(3) The incomes, and percentage of income paid for housing costs, of all households that purchased, and that purchased and rehabilitated, homes with assistance from the agency's low and moderate income housing fund for each year from 2000 to 2004, inclusive.

(d) Except as provided in subdivision (b), all provisions of Section 50052.5, including any definitions, requirements, standards, and regulations adopted to implement those provisions, shall apply to this section.

(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. 4. The Controller shall furnish a compilation of the information described in subdivision (c) of Section 33334.22 of the

Health and Safety Code to the Legislature and the Director of Housing and Community Development no later than April 1, 2005.

SEC. 5. (a) Section 1.3 of this bill incorporates amendments to Section 33334.2 of the Health and Safety Code proposed by both this bill and AB 637. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 33334.2 of the Health and Safety Code, (3) AB 661 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 637, in which case Sections 1, 1.5, and 1.7 of this bill shall not become operative.

(b) Section 1.5 of this bill incorporates amendments to Section 33334.2 of the Health and Safety Code proposed by both this bill and AB 661. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 33334.2 of the Health and Safety Code, (3) AB 637 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 661, in which case Sections 1, 1.3, and 1.7 of this bill shall not become operative.

(c) Section 1.7 of this bill incorporates amendments to Section 33334.2 of the Health and Safety Code proposed by this bill, AB 637, and AB 661. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2002, (2) all three bills amend Section 33334.2 of the Health and Safety Code, and (3) this bill is enacted after AB 637 and AB 661, in which case Sections 1, 1.3, and 1.5 of this bill shall not become operative.

CHAPTER 472

An act to amend Section 67940 of, and to add Section 67941 to, the Government Code, relating to regional transportation.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 67940 of the Government Code is amended to read:

67940. (a) The Santa Cruz County Regional Transportation Commission is hereby created, as a local area transportation planning agency, and not as part of the executive branch of state government, to provide regional transportation planning and development for the area of Santa Cruz County. The commission may be known by any other

name it chooses and is the legal successor to the Santa Cruz County Regional Transportation Commission, established pursuant to Section 29535, for all purposes, including those set forth in Section 67941.

(b) The governing body shall be composed of all five members of the Santa Cruz County Board of Supervisors, one member for each of the cities in the county, by each city, and three members appointed by the Santa Cruz Metropolitan Transit District.

(c) The appointing authority, for each regular member it appoints, and the board of supervisors for each of its members, may appoint an alternate member to serve in the place of the regular member when the regular member is absent or disqualified from participating in a meeting of the governing body.

SEC. 2. Section 67941 is added to the Government Code, to read:

67941. (a) The commission has the power of eminent domain and the power to preserve, acquire, construct, improve, and oversee multimodal transportation projects and services on rail rights-of-ways within Santa Cruz County in any manner that facilitates recreational, commuter, intercity, and intercounty travel. An action in eminent domain to acquire property or property interests within any incorporated city or within the unincorporated area of the county may not be commenced unless the governing body of the affected city or county has consented by resolution to the acquisition.

(b) The commission may contract for any services that accomplish its purposes.

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 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.

CHAPTER 473

An act to repeal Sections 131.3, 131.4, 131.5, 131.6, and 131.7 of the Code of Civil Procedure, to amend Sections 832.6, 1000, 1203.1b, 1417.8, 12600, and 12601 of, and to add Sections 1203.7, 1203.71, 1203.72, 1203.73, and 1203.74 to, the Penal Code, to amend Sections 1808, 13353, 13353.1, 13353.3, 13386, 23249, and 23575 of the Vehicle Code, and to repeal Chapter 1797 of the Statutes of 1963 and Chapter 1032 of the Statutes of 1969, relating to public safety.

[Approved by Governor October 3, 2001. Filed with
Secretary of State October 4, 2001.]

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

SECTION 1. Section 131.3 of the Code of Civil Procedure is repealed.

SEC. 2. Section 131.4 of the Code of Civil Procedure is repealed.

SEC. 3. Section 131.5 of the Code of Civil Procedure is repealed.

SEC. 4. Section 131.6 of the Code of Civil Procedure is repealed.

SEC. 5. Section 131.7 of the Code of Civil Procedure is repealed.

SEC. 6. Section 832.6 of the Penal Code is amended to read:

832.6. (a) Every person deputized or appointed, as described in subdivision (a) of Section 830.6, shall have the powers of a peace officer only when the person is any of the following:

(1) A level I reserve officer deputized or appointed pursuant to paragraph (1) or (2) of subdivision (a) or subdivision (b) of Section 830.6 and assigned to the prevention and detection of crime and the general enforcement of the laws of this state, whether or not working alone, and the person has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training. For level I reserve officers appointed prior to January 1, 1997, the basic training requirement shall be the course that was prescribed at the time of their appointment. Reserve officers appointed pursuant to this paragraph shall satisfy the continuing professional training requirement prescribed by the commission.

(2) A level II reserve officer assigned to the prevention and detection of crime and the general enforcement of the laws of this state while under the immediate supervision of a peace officer who has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training, and the level II reserve officer has completed the course required by Section 832 and any other training prescribed by the commission.

Level II reserve officers appointed pursuant to this paragraph may be assigned, without immediate supervision, to those limited duties that are authorized for level III reserve officers pursuant to paragraph (3). Reserve officers appointed pursuant to this paragraph shall satisfy the continuing professional training requirement prescribed by the commission.

(3) Level III reserve officers may be deployed and are authorized only to carry out limited support duties not requiring general law enforcement powers in their routine performance. Those limited duties shall include traffic control, security at parades and sporting events, report taking, evidence transportation, parking enforcement, and other duties that are

not likely to result in physical arrests. Level III reserve officers while assigned these duties shall be supervised in the accessible vicinity by a level I reserve officer or a full-time, regular peace officer employed by a law enforcement agency authorized to have reserve officers. Level III reserve officers may transport prisoners without immediate supervision. Those persons shall have completed the training required under Section 832 and any other training prescribed by the commission for those persons.

(4) A person assigned to the prevention and detection of a particular crime or crimes or to the detection or apprehension of a particular individual or individuals while working under the supervision of a California peace officer in a county adjacent to the state border who possesses a basic certificate issued by the Commission on Peace Officer Standards and Training, and the person is a law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and has completed the basic training required for peace officers in his or her state.

(5) For purposes of this section, a reserve officer who has previously satisfied the training requirements pursuant to this section, and has served as a level I or II reserve officer within the three-year period prior to the date of a new appointment shall be deemed to remain qualified as to the Commission on Peace Officer Standards and Training requirements if that reserve officer accepts a new appointment at the same or lower level with another law enforcement agency. If the reserve officer has more than a three-year break in service, he or she shall satisfy current training requirements.

This training shall fully satisfy any other training requirements required by law, including those specified in Section 832.

In no case shall a peace officer of an adjoining state provide services within a California jurisdiction during any period in which the regular law enforcement agency of the jurisdiction is involved in a labor dispute.

(b) Notwithstanding subdivision (a), a person who is issued a level I reserve officer certificate before January 1, 1981, shall have the full powers and duties of a peace officer as provided by Section 830.1 if so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, if the appointing authority determines the person is qualified to perform general law enforcement duties by reason of the person's training and experience. Persons who were qualified to be issued the level I reserve officer certificate before January 1, 1981, and who state in writing under penalty of perjury that they applied for but were not issued the certificate before January 1, 1981, may be issued the certificate before July 1, 1984. For purposes of this section, certificates so issued shall be deemed to

have the full force and effect of any level I reserve officer certificate issued prior to January 1, 1981.

(c) In carrying out this section, the commission:

(1) May use proficiency testing to satisfy reserve training standards.

(2) Shall provide for convenient training to remote areas in the state.

(3) Shall establish a professional certificate for reserve officers as defined in paragraph (1) of subdivision (a) and may establish a professional certificate for reserve officers as defined in paragraphs (2) and (3) of subdivision (a).

(4) Shall facilitate the voluntary transition of reserve officers to regular officers with no unnecessary redundancy between the training required for level I and level II reserve officers.

(d) In carrying out paragraphs (1) and (3) of subdivision (c), the commission may establish and levy appropriate fees, provided the fees do not exceed the cost for administering the respective services. These fees shall be deposited in the Peace Officers' Training Fund established by Section 13520.

(e) The commission shall include an amount in its annual budget request to carry out this section.

SEC. 7. Section 1000 of the Penal Code is amended to read:

1000. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for a violation of Section 11350, 11357, 11364, 11365, 11377, or 11550 of the Health and Safety Code, or Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant and was not sold or furnished to another, or subdivision (d) of Section 653f if the solicitation was for acts directed to personal use only, or Section 381 or subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4060 of the Business and Professions Code, and it appears to the prosecuting attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

(1) The defendant has no conviction for any offense involving controlled substances prior to the alleged commission of the charged offense.

(2) The offense charged did not involve a crime of violence or threatened violence.

(3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

(4) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(5) The defendant's record does not indicate that he or she has successfully completed or been terminated from diversion or deferred entry of judgment pursuant to this chapter within five years prior to the alleged commission of the charged offense.

(6) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged offense.

(b) The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) apply to the defendant. Upon the agreement of the prosecuting attorney, law enforcement, the public defender, and the presiding judge of the criminal division of the municipal court or of the superior court in a county in which there is no municipal court, or a judge designated by the presiding judge, this procedure shall be completed as soon as possible after the initial filing of the charges. If the defendant is found eligible, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for deferred entry of judgment at the arraignment. If the defendant is found ineligible for deferred entry of judgment, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant who is found ineligible for deferred entry of judgment is a postconviction appeal.

(c) All referrals for deferred entry of judgment granted by the court pursuant to this chapter shall be made only to programs that have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision.

(d) Deferred entry of judgment for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.4.

(e) Any defendant who is participating in a program referred to in this section may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. However, urine analysis results shall not be admissible as a basis for any new criminal prosecution or proceeding.

SEC. 8. Section 1203.1b of the Penal Code is amended to read:

1203.1b. (a) In any case in which a defendant is convicted of an offense and is the subject of any preplea or presentence investigation and report, whether or not probation supervision is ordered by the court, and in any case in which a defendant is granted probation or given a conditional sentence, the probation officer, or his or her authorized representative, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of any probation supervision or a conditional sentence, of conducting any preplea investigation and preparing any preplea report pursuant to Section 1203.7, of conducting any presentence investigation and preparing any presentence report made pursuant to Section 1203, and of processing a jurisdictional transfer pursuant to Section 1203.9 or of processing a request for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, whichever applies. The reasonable cost of these services and of probation supervision or a conditional sentence shall not exceed the amount determined to be the actual average cost thereof. A payment schedule for the reimbursement of the costs of preplea or presentence investigations based on income shall be developed by the probation department of each county and approved by the presiding judges of the municipal and superior courts. The court shall order the defendant to appear before the probation officer, or his or her authorized representative, to make an inquiry into the ability of the defendant to pay all or a portion of these costs. The probation officer, or his or her authorized representative, shall determine the amount of payment and the manner in which the payments shall be made to the county, based upon the defendant's ability to pay. The probation officer shall inform the defendant that the defendant is entitled to a hearing, that includes the right to counsel, in which the court shall make a determination of the defendant's ability to pay and the payment amount. The defendant must waive the right to a determination by the court of his or her ability to pay and the payment amount by a knowing and intelligent waiver.

(b) When the defendant fails to waive the right provided in subdivision (a) to a determination by the court of his or her ability to pay and the payment amount, the probation officer shall refer the matter to the court for the scheduling of a hearing to determine the amount of payment and the manner in which the payments shall be made. The court shall order the defendant to pay the reasonable costs if it determines that the defendant has the ability to pay those costs based on the report of the probation officer, or his or her authorized representative. The following shall apply to a hearing conducted pursuant to this subdivision:

(1) At the hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, and to confront and cross-examine adverse witnesses, and to disclosure of the evidence against the defendant, and a written statement of the findings of the court or the probation officer, or his or her authorized representative.

(2) At the hearing, if the court determines that the defendant has the ability to pay all or part of the costs, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability.

(3) At the hearing, in making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(4) When the court determines that the defendant's ability to pay is different from the determination of the probation officer, the court shall state on the record the reason for its order.

(c) The court may hold additional hearings during the probationary or conditional sentence period to review the defendant's financial ability to pay the amount, and in the manner, as set by the probation officer, or his or her authorized representative, or as set by the court pursuant to this section.

(d) If practicable, the court shall order or the probation officer shall set payments pursuant to subdivisions (a) and (b) to be made on a monthly basis. Execution may be issued on the order issued pursuant to this section in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

(e) The term ''ability to pay'' means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the preplea or presentence report, processing a jurisdictional transfer pursuant to Section 1203.9, processing requests for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, and probation supervision or conditional sentence, and shall include, but shall not be limited to, the defendant's:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than one year from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant shall be able to obtain employment within the one-year period from the date of the hearing.

(4) Any other factor or factors that may bear upon the defendant's financial capability to reimburse the county for the costs.

(f) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the probation officer for a review of the defendant's financial ability to pay or the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The probation officer and the court shall advise the defendant of this right at the time of rendering of the terms of probation or the judgment.

(g) All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department.

(h) The board of supervisors in any county, by resolution, may establish a fee for the processing of payments made in installments to the probation department pursuant to this section, not to exceed the administrative and clerical costs of the collection of those installment payments as determined by the board of supervisors, except that the fee shall not exceed fifty dollars ($50).

(i) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors.

SEC. 9. Section 1203.7 is added to the Penal Code, to read:

1203.7. Either at the time of the arrest for a crime of any person over 16 years of age, or at the time of the plea or verdict of guilty, the probation officer of the county of the jurisdiction of the crime shall, when so directed by the court, inquire into the antecedents, character, history, family environment and offense of that person, and must report the same to the court and file a report in writing in the records of the court. The report shall contain his or her recommendation for or against the release of the person on probation. If that person is released on probation and committed to the care of the probation officer, the officer shall keep a complete and accurate record in suitable books of the history of the case in court and of the name of the probation officer, and his or her acts in connection with the case; also the age, sex, nativity, residence, education, habits of temperance, whether married or single, and the conduct, employment and occupation and the parents' occupation and the condition of the person committed to his or her care during the term of probation, and the result of probation, which record shall be and constitute a part of the records of the court and shall at all times be open to the inspection of the court or any person appointed by the court for that purpose, as well as of all magistrates and the chief of police or other head of the police, unless otherwise ordered by the court. Those books of record shall be furnished by the county clerk , and shall be paid for out of the county treasury.

Five years after termination of probation in any case subject to this section, the probation officer may destroy any records and papers in his or her possession relating to the case.

The probation officer shall furnish to each person released on probation and committed to his or her care, a written statement of the terms and conditions of probation, and shall report to the court or judge appointing him or her, any violation or breach of the terms and conditions imposed by the court on the person placed in his or her care.

SEC. 10. Section 1203.71 is added to the Penal Code, to read:

1203.71. Any of the duties of the probation officer may be performed by a deputy probation officer and shall be performed by him or her whenever detailed to perform those by the probation officer; and it shall be the duty of the probation officer to see that the deputy probation officer performs his or her duties.

The probation officer and each deputy probation officer shall have, as to the person so committed to the care of the probation officer or deputy probation officer, the powers of a peace officer.

The probation officers and deputy probation officers shall serve as such probation officers in all courts having original jurisdiction of criminal actions in this state.

SEC. 11. Section 1203.72 is added to the Penal Code, to read:

1203.72. No court shall pronounce judgment upon any defendant, as to whom the court has requested a probation report pursuant to Section 1203.7, unless a copy of the probation report has been made available to the court, the prosecuting attorney, and the defendant or his or her attorney, at least two days or, upon the request of the defendant, five days prior to the time fixed by the court for consideration of the report with respect to pronouncement of judgment. The report shall be filed with the clerk of the court as a record in the case at the time the court considers the report.

If the defendant is not represented by an attorney, the court, upon ordering the probation report, shall also order the probation officer who prepares the report to discuss its contents with the defendant.

SEC. 12. Section 1203.73 is added to the Penal Code, to read:

1203.73. The probation officers and deputy probation officers in all counties of the state shall be allowed such necessary incidental expenses incurred in the performance of their duties as required by any law of this state, as may be authorized by a judge of the superior court; and the same shall be a charge upon the county in which the court appointing them has jurisdiction and shall be paid out of the county treasury upon a warrent issued therefor by the county auditor upon the order of the court; provided, however, that in counties in which the probation officer is appointed by the board of supervisors, the expenses shall be authorized

by the probation officer and claims therefor shall be audited, allowed and paid in the same manner as other county claims.

SEC. 13. Section 1203.74 is added to the Penal Code, to read:

1203.74. Upon a determination that, in his or her opinion, staff and financial resources available to him or her are insufficient to meet his or her statutory or court ordered responsibilities, the probation officer shall immediately notify the presiding judge of the superior court and the board of supervisors of the county, or city and county, in writing. The notification shall explain which responsibilities cannot be met and what resources are necessary in order that statutory or court ordered responsibilities can be properly discharged.

SEC. 14. Section 1417.8 of the Penal Code is amended to read:

1417.8. (a) Notwithstanding any other provision of this chapter, the court shall direct that any photograph of any minor that has been found by the court to be harmful matter, as defined in Section 313, and introduced or filed as an exhibit in any criminal proceeding specified in subdivision (b) be handled as follows:

(1) Prior to the final determination of the action or proceeding, the photograph shall be available only to the parties or to a person named in a court order to receive the photograph.

(2) After the final determination of the action or proceeding, the photograph shall be preserved with the permanent record maintained by the clerk of the court. The photograph may be disposed of or destroyed after preservation through any appropriate photographic or electronic medium. If the photograph is disposed of, it shall be rendered unidentifiable before the disposal. No person shall have access to the photograph unless that person has been named in a court order to receive the photograph. Any copy, negative, reprint, or other duplication of the photograph in the possession of the state, a state agency, the defendant, or an agent of the defendant, shall be delivered to the clerk of the court for disposal whether or not the defendant was convicted of the offense.

(b) The procedure provided by subdivision (a) shall apply to actions listed under subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, and to actions under the following provisions:

(1) Section 261.5.

(2) Section 272.

(3) Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1.

(4) Chapter 7.6 (commencing with Section 313) of Title 9 of Part 1.

(c) For the purposes of this section, ''photograph'' means any photographic image contained in a digital format or on any chemical, mechanical, magnetic, or electronic medium.

SEC. 15. Section 12600 of the Penal Code is amended to read:

12600. A person who is a peace officer or a custodial officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part

2 may if authorized by and under the terms and conditions as are specified by his or her employing agency purchase, possess, or transport any less lethal weapon or ammunition therefor, for official use in the discharge of his or her duties.

SEC. 16. Section 12601 of the Penal Code is amended to read:

12601. (a) ''Less lethal weapon'' means any device that is designed to or that has been converted to expel or propel less lethal ammunition by any action, mechanism, or process for the purpose of incapacitating, immobilizing, or stunning a human being through the infliction of any less than lethal impairment of physical condition, function, or senses, including physical pain or discomfort. It is not necessary that a weapon leave any lasting or permanent incapacitation, discomfort, pain, or other injury or disability in order to qualify as a less lethal weapon.

(b) Less lethal weapon includes the frame or receiver of any weapon described in subdivision (a), but does not include any of the following unless the part or weapon has been converted as described in subdivision (a):

(1) Pistol, revolver, or firearm as defined in Section 12001.

(2) Machinegun as defined in Section 12200.

(3) Rifle or shotgun using fixed ammunition consisting of standard primer and powder and not capable of being concealed upon the person.

(4) Pistols, rifles, and shotguns that are firearms having a barrel less than 0.18 inches in diameter and that are designed to expel a projectile by any mechanical means or by compressed air or gas.

(5) When used as designed or intended by the manufacturer, any weapon commonly regarded as a toy gun, and that as such is incapable of inflicting any impairment of physical condition, function, or senses.

(6) A destructive device as defined in Section 12301.

(7) A tear gas weapon as defined in Section 12402.

(8) A bow or crossbow designed to shoot arrows.

(9) A device commonly known as a slingshot.

(10) A device designed for the firing of stud cartridges, explosive rivets, or similar industrial ammunition.

(11) A device designed for signaling, illumination, or safety.

(12) An assault weapon as defined in Section 12276 or 12276.1.

(c) ''Less lethal ammunition'' means any ammunition that (1) is designed to be used in any less lethal weapon or any other kind of weapon (including, but not limited to, firearms, pistols, revolvers, shotguns, rifles, and spring, compressed air, and compressed gas weapons) and (2) when used in the less lethal weapon or other weapon is designed to immobilize or incapacitate or stun a human being through the infliction of any less than lethal impairment of physical condition, function, or senses, including physical pain or discomfort.

SEC. 17. Section 1808 of the Vehicle Code is amended to read:

1808. (a) Except where a specific provision of law prohibits the disclosure of records or information or provides for confidentiality, all records of the department relating to the registration of vehicles, other information contained on an application for a driver's license, abstracts of convictions, and abstracts of accident reports required to be sent to the department in Sacramento, except for abstracts of accidents where, in the opinion of a reporting officer, another individual was at fault, shall be open to public inspection during office hours. All abstracts of accident reports shall be available to law enforcement agencies and courts of competent jurisdiction.

(b) The department shall make available or disclose abstracts of convictions and abstracts of accident reports required to be sent to the department in Sacramento, as described in subdivision (a), if the date of the occurrence is not later than the following:

(1) Seven years for any violation designated as two points pursuant to Section 12810.

(2) Three years for accidents and all other violations.

(c) The department shall make available or disclose suspensions and revocations of the driving privilege while the suspension or revocation is in effect and for three years following termination of the action or reinstatement of the privilege, except that drivers license suspension actions taken pursuant to Sections 13202.6 and 13202.7, or Section 256 or 11350.6 of the Welfare and Institutions Code shall be disclosed only during the actual time period in which the suspension is in effect.

(d) The department shall not make available or disclose any suspension or revocation that has been judicially set aside or stayed.

(e) The department shall not make available or disclose personal information about any person unless the disclosure is in compliance with the Driver's Privacy Protection Act of 1994 (18 U.S.C. Sec. 2721 et seq.). However, any disclosure is subject to the prohibition in paragraph (2) of subdivision (a) of Section 12800.5.

(f) The department shall make available or disclose to the courts and law enforcement agencies any conviction of Section 23152, 23153, or Section 191.5 or paragraph (1) or (3) of subdivision (c) of Section 192 of the Penal Code, punished as a felony for a period of 10 years from the date of the offense for the purpose of imposing penalties mandated by Section 23550.5, or by any other applicable provisions of California law.

SEC. 18. Section 13353 of the Vehicle Code is amended to read:

13353. (a) If any person refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153, and that the person had

refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall do one of the following:

(1) Suspend the person's privilege to operate a motor vehicle for a period of one year.

(2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within seven years of either (A) a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, that resulted in a conviction, or (B) a suspension or revocation of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for an offense which occurred on a separate occasion.

(3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within seven years of any of the following:

(A) Two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, which resulted in convictions.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for offenses which occurred on separate occasions.

(C) Any combination of two or more of those convictions or administrative suspensions or revocations.

The officer's sworn statement shall be submitted pursuant to Section 13380 on a form furnished or approved by the department. The suspension or revocation shall not become effective until 30 days after the giving of written notice thereof, or until the end of any stay of the suspension or revocation, as provided for in Section 13558.

(D) For purposes of this section, a conviction of any offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is a conviction of that particular section of the Vehicle or Penal Code.

(b) The notice of the order of suspension or revocation under this section shall be served on the person by a peace officer pursuant to Section 23612. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 23612, the department immediately shall notify the person in writing of the action taken. The peace officer who serves the

notice, or the department, if applicable, also shall provide, if the officer or department, as the case may be, determines that it is necessary to do so, the person with the appropriate non-English notice developed pursuant to subdivision (d) of Section 14100.

(c) Upon receipt of the officer's sworn statement, the department shall review the record. For purposes of this section, the scope of the administrative review shall cover all of the following issues:

(1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(2) Whether the person was placed under arrest.

(3) Whether the person refused to submit to, or did not complete, the test or tests after being requested by a peace officer.

(4) Whether, except for the persons described in subdivision (a) of Section 23612 who are incapable of refusing, the person had been told that his or her driving privilege would be suspended or revoked if he or she refused to submit to, or did not complete, the test or tests.

(d) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension or revocation.

SEC. 19. Section 13353.1 of the Vehicle Code is amended to read:

13353.1. (a) If any person refuses an officer's request to submit to, or fails to complete, a preliminary alcohol screening test pursuant to Section 13388, upon receipt of the officer's sworn statement, submitted pursuant to Section 13380, that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136, and that the person had refused to submit to, or did not complete, the test after being requested by the officer, the department shall do one of the following:

(1) Suspend the person's privilege to operate a motor vehicle for a period of one year.

(2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within seven years of either of the following:

(A) A separate violation of subdivision (a) of Section 23136, which resulted in a finding of a violation, or a separate violation, which resulted in a conviction, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 of the Penal Code, or of paragraph (3) of subdivision (c) of Section 192 of that code.

(B) A suspension or revocation of the person's privilege to operate a motor vehicle if that action was taken pursuant to this section or Section 13353 or 13353.2 for an offense that occurred on a separate occasion.

(3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within seven years of any of the following:

(A) Two or more separate violations of subdivision (a) of Section 23136, which resulted in findings of violations, or two or more separate violations, which resulted in convictions, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 of the Penal Code, or of paragraph (3) of subdivision (c) of Section 192 of that code, or any combination thereof.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle if those actions were taken pursuant to this section, or Section 13353 or 13353.2, for offenses that occurred on separate occasions.

(C) Any combination of two or more of the convictions or administrative suspensions or revocations described in subparagraphs (A) or (B).

(b) For purposes of this section, a conviction of any offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is a conviction of that particular section of the Vehicle or Penal Code.

(c) The notice of the order of suspension or revocation under this section shall be served on the person by the peace officer pursuant to Section 13388 and shall not become effective until 30 days after the person is served with that notice. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 13388, the department immediately shall notify the person in writing of the action taken. The peace officer who serves the notice, or the department, if applicable, also shall provide, if the officer or department, as the case may be, determines that it is necessary to do so, the person with the appropriate non-English notice developed pursuant to subdivision (d) of Section 14100.

(d) Upon receipt of the officer's sworn statement, the department shall review the record. For purposes of this section, the scope of the administrative review shall cover all of the following issues:

(1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136.

(2) Whether the person was lawfully detained.

(3) Whether the person refused to submit to, or did not complete, the test after being requested to do so by a peace officer.

(e) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension or revocation.

SEC. 20. Section 13353.3 of the Vehicle Code is amended to read:

13353.3. (a) An order of suspension of a person's privilege to operate a motor vehicle pursuant to Section 13353.2 shall become effective 30 days after the person is served with the notice pursuant to Section 13388 or 13382, or subdivision (b) of Section 13353.2.

(b) The period of suspension of a person's privilege to operate a motor vehicle under Section 13353.2 is as follows:

(1) Except as provided in Section 13353.6, if the person has not been convicted of a separate violation of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 of the Penal Code, or of paragraph (3) of subdivision (c) of Section 192 of that code, the person has not been administratively determined to have refused chemical testing pursuant to Section 13353 or 13353.1, or the person has not been administratively determined to have been driving with an excessive concentration of alcohol pursuant to Section 13353.2 on a separate occasion, which offense or occurrence occurred within seven years of the occasion in question, the person's privilege to operate a motor vehicle shall be suspended for four months.

(2) If the person has been convicted of one or more separate violations of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153, Section 191.5 of the Penal Code, or paragraph (3) of subdivision (c) of Section 192 of that code, the person has been administratively determined to have refused chemical testing pursuant to Section 13353 or 13353.1, or the person has been administratively determined to have been driving with an excessive concentration of alcohol pursuant to Section 13353.2 on a separate occasion, which offense or occasion occurred within seven years of the occasion in question, the person's privilege to operate a motor vehicle shall be suspended for one year.

(3) Notwithstanding any other provision of law, if a person has been administratively determined to have been driving in violation of Section 23136 or to have refused chemical testing pursuant to Section 13353.1, the period of suspension shall not be for less than one year.

(c) If a person's privilege to operate a motor vehicle is suspended pursuant to Section 13353.2 and the person is convicted of a violation of Section 23140, 23152, or 23153, including a violation described in Section 23620, arising out of the same occurrence, both the suspension under Section 13353.2 and the suspension or revocation under Section 13352 shall be imposed, except that, notwithstanding Section 13354, the periods of suspension or revocation shall run concurrently, and the total

period of suspension or revocation shall not exceed the longer of the two suspension or revocation periods. This subdivision shall not affect a suspension or revocation pursuant to Section 13353 for refusal to submit to chemical testing or the imposition of consecutive periods of suspension or revocation pursuant to Section 13354 for that refusal.

(d) For purposes of this section, a conviction of any offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 of the Penal Code, is a conviction of that particular section of the Vehicle or Penal Code.

SEC. 21. Section 13386 of the Vehicle Code is amended to read:

13386. (a) (1) The Department of Motor Vehicles shall certify or cause to be certified ignition interlock devices required by Article 5 (commencing with Section 23575) of Chapter 2 of Division 11.5 and publish a list of approved devices.

(2) (A) The Department of Motor Vehicles shall ensure that ignition interlock devices that have been certified according to the requirements of this section continue to meet certification requirements. The department may periodically require manufacturers to indicate in writing whether the devices continue to meet certification requirements.

(B) The department may use denial of certification, suspension or revocation of certification, or decertification of an ignition interlock device in another state as an indication that the certification requirements are not met, if either of the following apply:

(i) The denial of certification, suspension or revocation of certification, or decertification in another state constitutes a violation by the manufacturer of Article 2.55 (commencing with Section 125) of Chapter 1 of Division 1 of the Title 13 of the California Code of Regulations.

(ii) The denial of certification for an ignition interlock device in another state was due to a failure of an ignition interlock device to meet the standards adopted by the regulation set forth in clause (i), specifically Sections 1 and 2 of the model specification for breath alcohol ignition interlock devices, as published by notice in the Federal Register, Vol. 57, No. 67, Tuesday, April 7, 1992, on pages 11774 to 11787, inclusive.

(C) Failure to continue to meet certification requirements shall result in suspension or revocation of certification of ignition interlock devices.

(b) The department shall utilize information from an independent laboratory to certify ignition interlock devices on or off the premises of the manufacturer or manufacturer's agent, in accordance with the guidelines. The cost of certification shall be borne by the manufacturers of ignition interlock devices. If the certification of a device is suspended

or revoked, the manufacturer of the device shall be responsible for, and shall bear the cost of, the removal of the device and the replacement of a certified device of the manufacturer or another manufacturer.

(c) No model of ignition interlock device shall be certified unless it meets the accuracy requirements and specifications provided in the guidelines adopted by the National Highway Traffic Safety Administration.

(d) All manufacturers of ignition interlock devices that meet the requirements of subdivision (c) and are certified in a manner approved by the Department of Motor Vehicles, who intend to market the devices in this state, first shall apply to the Department of Motor Vehicles on forms provided by that department. The application shall be accompanied by a fee in an amount not to exceed the amount necessary to cover the costs incurred by the department in carrying out this section.

(e) The department shall ensure that standard forms and procedures are developed for documenting decisions and compliance and communicating results to relevant agencies. These forms shall include all of the following:

(1) An ''Option to Install,'' to be sent by the Department of Motor Vehicles to repeat offenders along with the mandatory order of suspension or revocation. This shall include the alternatives available for early license reinstatement with the installation of an ignition interlock device and shall be accompanied by a toll-free telephone number for each manufacturer of a certified ignition interlock device. Information regarding approved installation locations shall be provided to drivers by manufacturers with ignition interlock devices that have been certified in accordance with this section.

(2) A ''Verification of Installation'' to be returned to the department by the reinstating offender upon application for reinstatement. Copies shall be provided for the manufacturer or the manufacturer's agent.

(3) A ''Notice of Noncompliance'' and procedures to ensure continued use of the ignition interlock device during the restriction period and to ensure compliance with maintenance requirements. The maintenance period shall be standardized at 60 days to maximize monitoring checks for equipment tampering.

(f) Every manufacturer and manufacturer's agent certified by the department to provide ignition interlock devices shall adopt fee schedules that provide for the payment of the costs of the device by applicants in amounts commensurate with the applicant's ability to pay.

SEC. 22. Section 23249 of the Vehicle Code is amended to read:

23249. The Department of Motor Vehicles shall conduct two studies to evaluate the effectiveness of ignition interlock in California and shall report the findings to the Legislature, as specified in subdivisions (a) and (b).

(a) The department shall conduct a process study of ignition interlock in California and report the findings to the Legislature on or before July 1, 2002. This study shall examine the implementation of ignition interlock by the courts, the department and ignition interlock installers, and report the rate at which courts assign interlock to persons convicted of a violation of Section 14601.2 and the rate at which these persons install these devices.

(b) The department shall conduct an outcome study of ignition interlock in California and report the findings to the Legislature on or before July 1, 2004. This study shall examine the effectiveness of California's ignition interlock laws in reducing recidivism, moving violation convictions and crashes among drivers, and among drivers applying to the department, and receiving from it, an ignition interlock restricted license.

SEC. 23. Section 23575 of the Vehicle Code is amended to read:

23575. (a) (1) In addition to any other provisions of law, the court may require that any person convicted of a first offense violation of Section 23152 or 23153 to install a certified ignition interlock device on any vehicle that the person owns or operates and prohibit that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device. The court shall give heightened consideration to applying this sanction to first offense violators with 0.20 percent or more, by weight, of alcohol in his or her blood at arrest, or with two or more prior moving traffic violations, or of persons who refused the chemical tests at arrest. If the court orders the ignition interlock device restriction, the term shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(2) The court shall require any person convicted of a violation of Section 14601.2 to install an ignition interlock device on any vehicle that the person owns or operates and prohibit the person from operating a motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device. The term of the restriction shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(b) The court shall include on the abstract of conviction or violation submitted to the Department of Motor Vehicles under Section 1803 or 1816, the requirement and term for the use of a certified ignition interlock device. The records of the department shall reflect mandatory use of the device for the term ordered by the court.

(c) The court shall advise the person that installation of an ignition interlock device on a vehicle does not allow the person to drive without a valid driver's license.

(d) Any person whose driving privilege is restricted by the court pursuant to this section shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate and monitor the operation of the device. The installer shall notify the court if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device. There is no obligation for the installer to notify the court if the person has complied with all of the requirements of this article.

(e) The court shall monitor the installation and maintenance of any ignition interlock device restriction ordered pursuant to subdivision (a) or (*l*). If any person fails to comply with the court order, the court shall give notice of the fact to the department pursuant to Section 40509.1.

(f) (1) Pursuant to Section 13352, if any person is convicted of a violation of Section 23152 or 23153, and the offense occurred within seven years of one or more separate violations of Section 23152 or 23153 that resulted in a conviction, the person may apply to the Department of Motor Vehicles for a restricted driver's license pursuant to Section 13352 that prohibits the person from operating a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device, certified pursuant to Section 13386. The restriction shall remain in effect for at least the remaining period of the original suspension or revocation and until all reinstatement requirements in Section 13352 are met.

(2) Pursuant to subdivision (g), the Department of Motor Vehicles shall immediately terminate the restriction issued pursuant to Section 13352 and shall immediately suspend or revoke the privilege to operate a motor vehicle of any person who attempts to remove, bypass, or tamper with the device, who has the device removed prior to the termination date of the restriction, or who fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device ordered pursuant to Section 13352. The privilege shall remain suspended or revoked for the remaining period of the originating suspension or revocation and until all reinstatement requirements in Section 13352 are met.

(g) Any person whose driving privilege is restricted by the Department of Motor Vehicles pursuant to Section 13352 shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate the device and monitor the operation of the device. The installer shall notify the Department of Motor Vehicles if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device. There is no obligation on the part of the installer to notify the department or the court if the person has complied with all of the requirements of this section.

(h) Nothing in this section permits a person to drive without a valid driver's license.

(i) The Department of Motor Vehicles shall include information along with the order of suspension or revocation for repeat offenders informing them that after a specified period of suspension or revocation has been completed, the person may either install an ignition interlock device on any vehicle that the person owns or operates or remain with a suspended or revoked driver's license.

(j) Pursuant to this section, out-of-state residents who otherwise would qualify for an ignition interlock device restricted license in California shall be prohibited from operating a motor vehicle in California unless that vehicle is equipped with a functioning ignition interlock device. No ignition interlock device is required to be installed on any vehicle owned by the defendant that is not driven in California.

(k) If a person has a medical problem that does not permit the person to breathe with sufficient strength to activate the device, then that person shall only have the suspension option.

(*l*) This section does not restrict a court from requiring installation of an ignition interlock device and prohibiting operation of a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device for any persons to whom subdivision (a) or (b) does not apply. The term of the restriction shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(m) For purposes of this section, ''vehicle'' does not include a motorcycle until the state certifies an ignition interlock device that can be installed on a motorcycle. Any person subject to an ignition interlock

device restriction shall not operate a motorcycle for the duration of the ignition interlock device restriction period.

(n) For purposes of this section, ''owned'' means solely owned or owned in conjunction with another person or legal entity. For purposes of this section, ''operates'' includes operating vehicles that are not owned by the person subject to this section.

(o) For the purposes of this section, bypass includes, but is not limited to, either of the following:

(1) Any combination of failing or not taking the ignition interlock device rolling retest three consecutive times.

(2) Any incidence of failing or not taking the ignition interlock device rolling retest, when not followed by an incidence of passing the ignition interlock rolling retest prior to turning the vehicles's engine off.

SEC. 24. Chapter 1797 of the Statutes of 1963 is repealed.

SEC. 25. Chapter 1032 of the Statutes of 1969 is repealed.

SEC. 26. Any section of any act enacted by the Legislature during the 2001 calendar year that takes effect on or before January 1, 2002, and that amends, amends and renumbers, adds, repeals and adds, or repeals any one or more of the sections affected by this act shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2001 calendar year and takes effect on or before January 1, 2002, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

SEC. 27. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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.

CHAPTER 474

An act to amend Sections 142001, 142050, 142052, 142200, 142201, 142250, 142251, 142254, 142257, 142258, and 142260 of, to repeal Section 142110 of, and to repeal and add Sections 142255, 142256, 142259, and 142263 of, the Public Utilities Code, and to add and repeal

Section 7252.10 of the Revenue and Taxation Code, relating to transportation.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 142001 of the Public Utilities Code is amended to read:

142001. The Legislature hereby finds and declares all of the following:

(a) In Fresno County, regional transportation improvements and local transportation improvements and services are an immediate high priority needed to resolve the county's transportation problems that threaten the economic viability and development potential of the county and adversely impact the quality of life therein.

(b) In order to deal in an expeditious manner with current and future transportation problems, the county needs to develop and implement a local funding program that goes significantly beyond current federal and state funding which is inadequate to resolve these problems.

(c) It is in the public interest to allow the voters of Fresno County to continue the Fresno County Transportation Authority so that local transportation decisions can be implemented in a timely manner to provide regional transportation improvements and to meet local transportation needs.

SEC. 2. Section 142050 of the Public Utilities Code is amended to read:

142050. The Fresno County Transportation Authority is hereby continued in the county, as originally created by this section.

SEC. 3. Section 142052 of the Public Utilities Code is amended to read:

142052. (a) Except for the Mayor of the City of Fresno, the members of the authority shall serve for a term of two years.

(b) If any member other than the public member ceases to be an elected official, that member shall cease to be a member of the authority, and another member shall be appointed for the remainder of the term pursuant to Section 142051.

SEC. 4. Section 142110 of the Public Utilities Code is repealed.

SEC. 5. Section 142200 of the Public Utilities Code is amended to read:

142200. The authority shall consult with, and coordinate its actions to secure funding for the completion and improvement of the priority regional transportation improvements with the cities in the county, the board of supervisors, the Council of Fresno County Governments, and

the Department of Transportation for the purpose of integrating its planned improvements with the other transportation improvement plans and operations of other transportation agencies impacting the county.

SEC. 6. Section 142201 of the Public Utilities Code is amended to read:

142201. The authority shall prepare and adopt an annual report each year on progress made to achieve the objective of improving transportation conditions related to priority regional transportation improvements and other local transportation needs.

SEC. 7. Section 142250 of the Public Utilities Code is amended to read:

142250. (a) A retail transactions and use tax ordinance, applicable in the incorporated and unincorporated territory of the county may be imposed by the authority in accordance with Section 142262 of this code and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, if two-thirds of the electors voting on the measure vote to approve the imposition of the tax at an election which shall be called for that purpose by resolution of the board of supervisors.

(b) The election shall be held in the November 2002 or a subsequent general election.

(c) The tax ordinance shall become operative as set forth in Section 142253. The tax ordinance shall specify the period, not to exceed 30 years, during which the tax is to be imposed. The tax may be terminated earlier if the conditions of Sections 142255, 142256, 142257, and 142260 have been met.

SEC. 8. Section 142251 of the Public Utilities Code is amended to read:

142251. The authority, in the retail transactions and use tax ordinance, shall state the nature of the tax to be imposed, shall provide the tax rate or rates or the maximum tax rate or rates, shall specify the purposes for which the revenue derived from the tax will be used, and may set a term, not to exceed 30 years, during which the tax may be imposed.

SEC. 9. Section 142254 of the Public Utilities Code is amended to read:

142254. The revenues from the retail transactions and use taxes imposed pursuant to this chapter may be allocated by the authority for the administration of this division and for transportation improvement purposes, including administration of this division, legal actions related thereto, planning, environmental reviews, design, construction, and repair.

SEC. 10. Section 142255 of the Public Utilities Code is repealed.

SEC. 11. Section 142255 is added to the Public Utilities Code, to read:

142255. A county transportation expenditure plan shall be prepared by the transportation planning agency for the expenditure of the revenues expected to be derived from the tax imposed pursuant to this chapter, together with other federal, state, and local funds expected to be available for transportation improvements, for the period during which the tax is to be imposed.

SEC. 12. Section 142256 of the Public Utilities Code is repealed.

SEC. 13. Section 142256 is added to the Public Utilities Code, to read:

142256. (a) A county transportation expenditure plan shall not be adopted by the authority until it has received the approval of the board of supervisors and of the city councils representing both a majority of the cities in the county and a majority of the population residing in the incorporated areas of the county.

(b) The plan shall be adopted prior to the call of the election provided for in Section 142250.

SEC. 14. Section 142257 of the Public Utilities Code is amended to read:

142257. (a) The expenditure plan shall specify the amount and the formula by which the retail transactions and use tax shall be allocated to each city and the county for local transportation purposes determined to be priority projects by local governments to which funds are allocated.

For purposes of this subdivision, the population of the county is the population of the unincorporated area of the county.

(b) Prior to the authority allocating funds, each local government shall certify to the authority that the funds will not be substituted for property tax funds which are currently utilized to fund existing local transportation programs. If the local government is unable to segregate property tax revenues from other general fund revenues which cannot be so distinguished, substitution of funds from the authority for general funds is also prohibited.

(c) The authority shall require that local governments to which funds are allocated to separately account for those funds and maintain records of expenditures in accordance with administrative code requirements adopted by the authority.

SEC. 15. Section 142258 of the Public Utilities Code is amended to read:

142258. (a) Except as otherwise provided by Section 142260, the transportation planning agency may amend the expenditure plan. The transportation planning agency, at a minimum, shall review biennially and assess the needs for transportation improvements contained in the expenditure plan as specified in Section 142255. As part of this review and assessment, the transportation planning agency may solicit proposals for transportation improvements from the Department of

Transportation and the cities and the county. The transportation planning agency shall adopt a procedure for evaluating these proposals in consultation with the Department of Transportation and the cities and the county.

(b) Based on the evaluation, the transportation planning agency shall prepare an updated plan for the expenditure of the revenues expected to be derived from the retail transactions and use tax imposed pursuant to this chapter, together with other federal, state, and local improvements, for the period during which the tax is imposed. The first five years of the plan shall be incorporated into the transportation planning agency's annual submission to the California Transportation Commission for the state transportation improvement program pursuant to Chapter 2.5 (commencing with Section 65080) of Division 1 of Title 7 of the Government Code.

(c) The expenditure plan shall also include projections of revenues likely to be available from other federal, state, and local funds expected to be available for expenditure plan transportation improvements for the period during which the tax is imposed.

(d) Before adoption of an expenditure plan, the transportation planning agency shall conduct public hearings on the plan.

SEC. 16. Section 142259 of the Public Utilities Code is repealed.

SEC. 17. Section 142259 is added to the Public Utilities Code, to read:

142259. Amendments to the expenditure plan adopted pursuant to Section 142255 are to provide for the use of additional federal, state, and local funds, to account for unexpected revenues, or to take into consideration unforeseen circumstances. The transportation planning agency shall take all appropriate actions to give highest priority to the projects in the initial expenditure plan, and any amendments shall not delay or delete any project in the initial plan without the transportation planning agency holding a public hearing and documenting within the plan the reason why the amendments are being recommended to the authority and are necessary relative to conditions beyond control of the authority.

SEC. 18. Section 142260 of the Public Utilities Code is amended to read:

142260. (a) The authority may, by the affirmative vote of a majority of the members, approve, or approve subject to amendment, the updated expenditure plan adopted pursuant to Section 142258. The authority shall take all appropriate actions to give highest priority to the projects in the initial expenditure plan, and any amendments shall not delay or delete any project in the initial plan without the authority holding a public hearing and adopting a resolution specifically detailing the reason

why the amendments are necessary relative to conditions beyond control of the authority.

(b) The authority shall notify the transportation planning agency, the board of supervisors, and the city council of each city in the county and provide them with a copy of the proposed amendments.

(c) The proposed amendments shall become effective 45 days after notice is given pursuant to subdivision (b). A public hearing shall be held on the proposed amendments prior to final adoption if any city or the county objects to the amendment in writing within 30 days of receiving the notice.

SEC. 19. Section 142263 of the Public Utilities Code is repealed.

SEC. 20. Section 142263 is added to the Public Utilities Code, to read:

142263. (a) The board of supervisors, as part of the ballot proposition to approve the imposition of a retail transactions and use tax, shall seek authorization from the electors to issue bonds payable solely from the proceeds of the tax.

(b) The maximum bonded indebtedness which may be authorized shall be an amount equal to the sum of the principal and interest on the bonds, not to exceed the estimated proceeds of the tax, for a period of not more than 30 years. The actual wording of the proposition on any short form of ballot card, label, or other device, regardless of the system of voting used, shall read as follows:

FRESNO COUNTY TRANSPORTATION MEASURE Shall Fresno County voters authorize an extension of up to 30 years of the current one-half percent sales tax to be used in accordance with the Expenditure Plan adopted by the authority to provide countywide transportation improvement which would contribute to increased mobility, less traffic congestion, improved air quality, and increased safety? The authority is authorized to issue bonds payable from the proceeds of that tax and establishes the appropriations limit of the authority in the amount of ____ dollars ($____).	YES	
	NO	

SEC. 21. Section 7252.10 is added to the Revenue and Taxation Code, to read:

7252.10. ''District,'' as used in this part, also means the Fresno County Transportation Authority, if authorized to impose transactions and use taxes pursuant to this part. This section shall remain in effect as long as Division 15 (commencing with Section 142000) of the Public Utilities Code remains in effect, but shall be repealed upon the repeal of that division.

SEC. 22. If any provision of this act or the application thereof to any circumstances is held unconstitutional, that decision shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end, the provisions of this act are severable. The Legislature hereby declares that it would have passed this act, and each portion thereof, irrespective of the fact that any other portion be declared unconstitutional.

SEC. 23. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

CHAPTER 475

An act to amend Sections 30061 and 30063 of, and to repeal Section 30064.1 of, the Government Code, relating to state and local government finance and taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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 make the necessary statutory changes to implement the Budget Act of 2001 relative to state and local government finance and taxation.

SEC. 2. Section 30061 of the Government Code is amended to read:

30061. (a) There shall be established in each county treasury a Supplemental Law Enforcement Services Fund (SLESF), to receive all amounts allocated to a county for purposes of implementing this chapter.

(b) In any fiscal year for which a county receives money to be expended for the implementation of this chapter, the county auditor shall allocate moneys in the county's SLESF, including any interest or other

return earned on the investment of those moneys, within 30 days of the deposit of those moneys into the fund, and shall allocate those moneys in accordance with the requirements set forth in this subdivision. However, the auditor shall not transfer those moneys to a recipient agency until the Supplemental Law Enforcement Oversight Committee certifies receipt of an approved expenditure plan from the governing board of that agency.

(1) Five and fifteen one hundredths percent (5.15%) to the county sheriff for county jail construction and operation. In the case of Madera, Napa, and Santa Clara Counties, this allocation shall be made to the county director or chief of corrections.

(2) Five and fifteen one hundredths percent (5.15%) to the district attorney for criminal prosecution.

(3) Thirty-nine and seven-tenths percent (39.7%) to the county and the cities within the county, and, in the case of San Mateo, Kern, Siskiyou, and Contra Costa Counties, also to the Broadmoor Police Protection District, the Bear Valley Community Services District, the Stallion Springs Community Services District, the Lake Shastina Community Services District, and the Kensington Police Protection and Community Services District, in accordance with the relative population of the cities within the county and the unincorporated area of the county, and the Broadmoor Police Protection District in the County of San Mateo, the Bear Valley Community Services District and the Stallion Springs Community Services District in Kern County, the Lake Shastina Community Services District in Siskiyou County, and the Kensington Police Protection and Community Services District in Contra Costa County, as specified in the most recent January estimate by the population research unit of the Department of Finance, and as adjusted to provide a grant of at least one hundred thousand dollars ($100,000) to each law enforcement jurisdiction. For a newly incorporated city whose population estimate is not published by the Department of Finance but which was incorporated prior to July 1 of the fiscal year in which an allocation from the SLESF is to be made, the city manager, or an appointee of the legislative body, if a city manager is not available, and the county administrative or executive officer shall prepare a joint notification to the Department of Finance and the county auditor with a population estimate reduction of the unincorporated area of the county equal to the population of the newly incorporated city by July 15, or within 15 days after the Budget Act is enacted, of the fiscal year in which an allocation from the SLESF is to be made. No person residing within the Broadmoor Police Protection District, the Bear Valley Community Services District, the Stallion Springs Community Services District, the Lake Shastina Community Services District, or the Kensington Police Protection and Community Services District shall also be counted as

residing within the unincorporated area of the County of San Mateo, Kern, Siskiyou, or Contra Costa, or within any city located within those counties. The county auditor shall allocate a grant of at least one hundred thousand dollars ($100,000) to each law enforcement jurisdiction. Moneys allocated to the county pursuant to this subdivision shall be retained in the county SLESF, and moneys allocated to a city pursuant to this subdivision shall be deposited in a SLESF established in the city treasury.

(4) Fifty percent (50%) to the county or city and county to implement a comprehensive multiagency juvenile justice plan as provided in this paragraph. This plan shall be developed by the local juvenile justice coordinating council in each county and city and county with the membership described in Section 749.22 of the Welfare and Institutions Code. If a plan has been previously approved by the Board of Corrections, the plan shall be reviewed and modified annually by the council. The plan or modified plan shall be approved by the county board of supervisors, and in the case of a city and county, the plan shall also be approved by the mayor. The plan or modified plan shall be submitted to the Board of Corrections by May 1, 2002, and annually thereafter.

(A) Juvenile justice plans shall include, but not be limited to, all of the following components:

(i) An assessment of existing law enforcement, probation, education, mental health, health, social services, drug and alcohol and youth services resources that specifically target at-risk juveniles, juvenile offenders, and their families.

(ii) An identification and prioritization of the neighborhoods, schools, and other areas in the community that face a significant public safety risk from juvenile crime, such as gang activity, daylight burglary, late-night robbery, vandalism, truancy, controlled substances sales, firearm-related violence, and juvenile substance abuse and alcohol use.

(iii) A local juvenile justice action strategy that provides for a continuum of responses to juvenile crime and delinquency and demonstrates a collaborative and integrated approach for implementing a system of swift, certain, and graduated responses for at-risk youth and juvenile offenders.

(iv) Programs identified in clause (iii) that are proposed to be funded pursuant to this subparagraph, including the projected amount of funding for each program.

(B) Programs proposed to be funded shall satisfy all of the following requirements:

(i) Be based on programs and approaches that have been demonstrated to be effective in reducing delinquency and addressing juvenile crime for any elements of response to juvenile crime and

delinquency, including prevention, intervention, suppression, and incapacitation.

(ii) Collaborate and integrate services of all the resources set forth in clause (i) of subparagraph (A), to the extent appropriate.

(iii) Employ information sharing systems to ensure that county actions are fully coordinated, and designed to provide data for measuring the success of juvenile justice programs and strategies.

(iv) Adopt goals related to the outcome measures that shall be used to determine the effectiveness of the local juvenile justice action strategy.

(C) The plan shall also identify the specific objectives of the programs proposed for funding and specified outcome measures to determine the effectiveness of the programs and an accounting for all program participants, including those who do not complete the programs. Outcome measures of the programs proposed to be funded shall include, but not be limited to, all of the following:

(i) The rate of juvenile arrests per 100,000 population.

(ii) The rate of successful completion of probation.

(iii) The rate of successful completion of restitution and court-ordered community service responsibilities.

(iv) Arrest, incarceration, and probation violation rates of program participants.

(v) Quantification of the annual per capita costs of the program.

(D) The Board of Corrections shall review plans or modified plans submitted pursuant to this paragraph within 30 days upon receipt of submitted or resubmitted plans or modified plans. The board shall approve only those plans or modified plans that fulfill the requirements of this paragraph, and shall advise a submitting county or city and county immediately upon the approval of its plan or modified plan. The board shall offer, and provide if requested, technical assistance to any county or city and county that submits a plan or modified plan not in compliance with the requirements of this paragraph. The SLESF shall only allocate funding pursuant to this paragraph upon notification from the board that a plan or modified plan has been approved.

(E) To assess the effectiveness of programs funded pursuant to this paragraph using the program outcome criteria specified in subparagraph (C), the following periodic reports shall be submitted:

(i) Each county or city and county shall report, beginning August 15, 2001, and annually thereafter, to the county board of supervisors and the Board of Corrections, in a format specified by the Board of Corrections, on the programs funded pursuant to this chapter and program outcomes as specified in subparagraph (C).

(ii) The Board of Corrections shall compile the local reports and, by January 15, 2003, and annually thereafter, make a report to the Governor

and the Legislature on program expenditures within each county and city and county from the appropriation for the purposes of this paragraph, on the outcomes as specified in subparagraph (C) of the programs funded pursuant to this paragraph and the statewide effectiveness of the comprehensive multiagency juvenile justice plans .

(iii) The reports required by this subparagraph shall be made by the dates specified, notwithstanding Section 30064.1.

(c) Subject to subdivision (d), for each fiscal year in which the county and each city, and the Broadmoor Police Protection District, the Bear Valley Community Services District, the Stallion Springs Community Services District, the Lake Shastina Community Services District, and the Kensington Police Protection and Community Services District, receive moneys pursuant to paragraph (3) of subdivision (b), the county, each city, and each district specified in this subdivision shall appropriate those moneys in accordance with the following procedures:

(1) In the case of the county, the county board of supervisors shall appropriate existing and anticipated moneys exclusively to provide front line law enforcement services, other than those services specified in paragraphs (1) and (2) of subdivision (b), in the unincorporated areas of the county, in response to written requests submitted to the board by the county sheriff and the district attorney. Any request submitted pursuant to this paragraph shall specify the front line law enforcement needs of the requesting entity, and those personnel, equipment, and programs that are necessary to meet those needs. The board shall, at a public hearing held in September in each year that the Legislature appropriates funds for purposes of this chapter, consider and determine each submitted request within 60 days of receipt, pursuant to the decision of a majority of a quorum present. The board shall consider these written requests separate and apart from the process applicable to proposed allocations of the county general fund.

(2) In the case of a city, the city council shall appropriate existing and anticipated moneys exclusively to fund front line municipal police services, in accordance with written requests submitted by the chief of police of that city or the chief administrator of the law enforcement agency that provides police services for that city. These written requests shall be acted upon by the city council in the same manner as specified in paragraph (1) for county appropriations.

(3) In the case of the Broadmoor Police Protection District within the County of San Mateo, the Bear Valley Community Services District or the Stallion Springs Community Services District within Kern County, the Lake Shastina Community Services District within Siskiyou County, or the Kensington Police Protection and Community Services District within Contra Costa County, the legislative body of that special district shall appropriate existing and anticipated moneys exclusively to

fund front line municipal police services, in accordance with written requests submitted by the chief administrator of the law enforcement agency that provides police services for that special district. These written requests shall be acted upon by the legislative body in the same manner specified in paragraph (1) for county appropriations.

(d) For each fiscal year in which the county, a city, or the Broadmoor Police Protection District within the County of San Mateo, the Bear Valley Community Services District or the Stallion Springs Community Services District within Kern County, the Lake Shastina Community Services District within Siskiyou County, or the Kensington Police Protection and Community Services District within Contra Costa County receives any moneys pursuant to this chapter, in no event shall the governing body of any of those recipient agencies subsequently alter any previous, valid appropriation by that body, for that same fiscal year, of moneys allocated to the county or city pursuant to paragraph (3) of subdivision (b).

(e) Funds received pursuant to subdivision (b) shall be expended or encumbered in accordance with the provisions of this chapter no later than June 30 of the following fiscal year. A local agency that has not met this requirement shall remit unspent SLESF moneys to the Controller for deposit into the General Fund.

(f) In the event that a county, a city, a city and county, or a qualifying special district does not comply with the requirements of this chapter to receive an SLESF allocation, the Controller shall revert those funds to the General Fund.

SEC. 3. Section 30063 of the Government Code is amended to read:

30063. (a) The Supplemental Law Enforcement Services Fund (SLESF) in each county or city is to be expended exclusively as required by this chapter. Moneys in that fund shall not be transferred to, or intermingled with, the moneys in any other fund in the county or city treasury, except that moneys may be transferred from the SLESF to the county's or city's general fund to the extent necessary to facilitate the appropriation and expenditure of those transferred moneys in the manner required by this chapter.

(b) Moneys in a SLESF may only be invested in safe and conservative investments in accordance with those standards of prudent investment applicable to the investment of trust moneys. The treasurer of the county and each city shall provide a monthly SLESF investment report to either the police chief or the county sheriff and district attorney, as applicable.

(c) Each year, at least 30 days prior to the date of the duly noticed public hearing required pursuant to paragraph (1) of subdivision (c) of Section 30061, the county auditor and city treasurer shall detail and summarize allocations from the county's or city's SLESF, as applicable, in a written, public report filed with the Supplemental Law Enforcement

Oversight Committee (SLEOC), the county board of supervisors or city council, as applicable, for the entirety of the immediately preceding fiscal year, and the county sheriff or police chief, as applicable.

(d) A summary of the annual reports required in subdivision (c) shall be submitted in a standardized format to be developed by the Controller, in conjunction with the California District Attorney's Association, California Police Chief's Association, California State Sheriff's Association, California Peace Officer's Association, California County Auditor's Association, and California Municipal Treasurer's Association, by each SLEOC to the Controller on or before October 15, 2001, and each year thereafter. The Controller shall make a copy of the summarized reports available to the Governor, the Legislature, and the Legislative Analyst's office.

(e) By March 1 of each year, the Legislative Analyst's office shall report to the Legislature on the types of expenditures made by local law enforcement agencies in the previous fiscal year pursuant to this chapter, and, to the extent feasible, on the effects of those expenditures on law enforcement and public safety.

(f) A county, a city, or a city and county that fails to submit the data required pursuant to subdivision (d) or fails to expend the SLESF moneys provided by the date specified in subdivision (e) of Section 30061 shall forfeit its allocation provided pursuant to Section 30061 for the subsequent fiscal year. The Controller shall reduce the affected county's allocation by the appropriate amount and shall identify the county, city, or city and county and the corresponding amount reduced for the affected local agency. Funds not allocated pursuant to this subdivision shall revert to the General Fund.

(g) Notwithstanding subdivision (f), if the Supplemental Law Enforcement Oversight Committee (SLEOC) fails to transmit the data to the Controller required pursuant to subdivision (d), the local law enforcement agency may submit its expenditure data directly to the Controller no later than 15 days after the date specified in subdivision (d). If the local law enforcement agency has complied with other requirements in this chapter, it shall be eligible for an allocation the subsequent fiscal year. However, the Controller shall reduce the SLESF allocation to the sheriff and district attorney and the cities represented in the SLEOC, and shall reduce the allocation to all the local law enforcement agencies that failed to provide the expenditure data within the 15 days. Funds not allocated pursuant to this subdivision shall revert to the General Fund.

SEC. 4. Section 30064.1 of the Government Code is repealed.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

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

In order to make the necessary statutory changes to implement the Budget Act of 2001 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 476

An act to add Section 1732.8 to the Welfare and Institutions Code, relating to prisons.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 1732.8 is added to the Welfare and Institutions Code, to read:

1732.8. (a) Notwithstanding any other law and subject to the provisions of this section, the Director of the Youth Authority may transfer to and cause to be confined within the custody of the Director of Corrections any person 18 years of age or older who is subject to the custody, control, and discipline of the Department of the Youth Authority and who is scheduled to be returned, or has been returned, to the Department of the Youth Authority from the Department of Corrections after serving a sentence imposed pursuant to Section 1170 of the Penal Code for a felony that was committed while he or she was in the custody of the Department of the Youth Authority.

(b) No person shall be transferred pursuant to this section until and unless the person voluntarily, intelligently, and knowingly executes a written consent to the transfer, which shall be irrevocable.

(c) Prior to being returned to the Youth Authority, a person in the custody of the Department of Corrections who is scheduled to be returned to the Department of the Youth Authority shall meet personally with a Youth Authority parole agent or other appropriate Department of the Youth Authority staff member. The parole agent or staff member shall explain, using language clearly understandable to the person, all of the following matters:

(1) What will be expected from the person when he or she returns to a Youth Authority institution in terms of cooperative daily living conduct and participation in applicable counseling, academic, vocational, work experience, or specialized programming.

(2) The conditions of parole applicable to the person, and how those conditions will be monitored and enforced while the person is in the custody of the Youth Authority.

(3) The person's right under this section to voluntarily and irrevocably consent to continue to be housed in an institution under the jurisdiction of the Department of Corrections instead of being returned to the Youth Authority.

(d) A person who has been returned to the Youth Authority after serving a sentence described in subdivision (a) may be transferred to the custody of the Department of Corrections if the person consents to the transfer after having been provided with the explanations described in subdivision (c).

(e) If a Youth Authority person consents to being housed in an institution under the jurisdiction of the Department of Corrections pursuant to this section, he or she shall be subject to the general rules and regulations of the Department of Corrections. The Youthful Offender Parole Board shall continue to determine the person's eligibility for parole at the same intervals, in the same manner, and under the same standards and criteria that would be applicable if the person were confined in the Department of the Youth Authority. However, the board shall not order or recommend any treatment, education, or other programming that is unavailable in the institution where the person is housed, and shall not deny parole to a person housed in the institution based solely on the person's failure to participate in programs unavailable to the person.

(f) Any person housed in an institution under the jurisdiction of the Department of Corrections pursuant to this section who has not attained a high school diploma or its equivalent shall participate in educational or vocational programs, to the extent the appropriate programs are available.

(g) Upon notification by the Director of Corrections that the person should be no longer be housed in an institution under its jurisdiction, the Department of the Youth Authority shall immediately send for, take, and receive the person back into an institution under its jurisdiction.

CHAPTER 477

An act to add Sections 11061 and 11061.5 to the Penal Code, relating to criminalists.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

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

(a) Ongoing legislative efforts to improve the criminal justice system have created an urgent need for forensic scientists qualified to perform DNA analysis.

(b) DNA analytical techniques are undergoing rapid and intense change brought about by emerging technology and the availability of ever more sensitive tests and scientific standards. DNA analysts need to have strong scientific backgrounds and specific experiences in forensic science laboratories so they are trained to apply the best techniques to this important law enforcement area.

(c) The Department of Justice should work with accredited postsecondary institutions, including the University of California and the California State University, to encourage development of degree programs that can provide students with both the rigorous scientific backgrounds and the practical laboratory experiences necessary for careers in forensic science and DNA analysis.

(d) At the national level, organizations are developing standards and certification programs that can ensure that analysts in forensic laboratories demonstrate proficiency in their respective fields. The American Board of Criminalistics has developed a peer-based professional certification program that could be used for the certification of DNA analysts.

(e) The Department of Justice should develop internship positions in working forensic laboratories and fund fellowships to recruit and support a diverse body of candidates for the profession.

SEC. 2. Section 11061 is added to the Penal Code, to read:

11061. To meet the increasing statewide need for criminalists properly trained in DNA analysis, the Department of Justice, the California State University, and, upon agreement by the regents, the University of California, shall work together to enhance collaborative opportunities for DNA training of university students, graduates, and existing employees of crime laboratories.

SEC. 3. Section 11061.5 is added to the Penal Code, to read:

11061.5. (a) The Department of Justice, through its California Criminalistics Institute, shall develop and coordinate an internship program in forensic DNA analysis for graduate-level students.

(1) Candidates for the program must possess at least a baccalaureate degree.

(2) The program shall be associated with graduate academic programs at accredited postsecondary institutions including the University of California and the California State University.

(3) The program shall include a one-year internship at a public forensic DNA laboratory for which the interns shall receive a stipend or fellowship funded by the Department of Justice.

(4) The program shall be designed to prepare students to meet national standards for DNA analysis, such as those established by the DNA Advisory Board (DAB) and the Scientific Working Group on DNA Analysis Methods (SWGDAM).

(5) In order to complete the program, interns shall be required to successfully complete a national certification examination like that administered in forensic molecular biology by the American Board of Criminalistics.

(b) Funding for the provisions of this measure shall be subject to both of the following conditions:

(1) The Department of Justice shall establish a working partnership and affiliation with accredited postsecondary institutions that can provide graduate-level academic programing.

(2) The Department of Justice shall submit a budgetary request for the internship program to the Director of the Department of Finance by May 15, 2002.

(c) The provisions of this act may only be implemented to the extent funds are appropriated for their purposes in the annual Budget Act.

CHAPTER 478

An act to amend Section 530.5 of the Penal Code, relating to identity theft.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 530.5 of the Penal Code is amended to read:

530.5. (a) Every person who willfully obtains personal identifying information, as defined in subdivision (b), of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished either by imprisonment in a county jail not to exceed one year, a fine not to exceed one thousand dollars ($1,000), or both that imprisonment and fine, or by imprisonment in the state prison, a fine not to exceed ten thousand dollars ($10,000), or both that imprisonment and fine.

(b) ''Personal identifying information,'' as used in this section, means the name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, or credit card number of an individual person.

(c) In any case in which a person willfully obtains personal identifying information of another person without the authorization of that person, and uses that information to commit a crime in addition to a violation of subdivision (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

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.

CHAPTER 479

An act to amend Section 4108 of the Food and Agricultural Code, relating to expositions and fairs.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 4108 of the Food and Agricultural Code is amended to read:

4108. The California Science Center shall establish the position of Exposition Park Manager to be filled by a person appointed by the Governor for the purpose of managing, scheduling, and administering all park-related events, including oversight for the police and security services of the park.

(a) The Exposition Park Manager may appoint the following persons:

(1) The chief and assistant chief of museum security and safety who shall have the powers of peace officers as specified in Section 830.3 of the Penal Code.

(2) Other safety officers who shall have the powers of arrest as specified in Section 830.7 of the Penal Code.

(b) The officers appointed pursuant to subdivision (a) shall provide police and security services to keep order and to preserve the peace and safety of persons and property at the California Science Center and at Exposition Park on a year-round basis.

CHAPTER 480

An act to amend Section 14602.6 of the Vehicle Code, relating to vehicle impoundment.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 14602.6 of the Vehicle Code is amended to read:

14602.6. (a) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked or without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle, without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days' impoundment when the legal owner redeems the impounded vehicle. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852.

(c) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (a) of Section 14602.5.

(d) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days' impoundment under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

(C) When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Section 13200) of Chapter 2 of Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division 6.

(D) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.

(E) When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance.

(2) No vehicle shall be released pursuant to this subdivision without presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(e) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(f) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 days' impoundment if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment.

(3) The legal owner or the legal owner's agent presents foreclosure documents or an affidavit of repossession for the vehicle. The foreclosure documents or affidavit of repossession may be originals, photocopies, or facsimile copies, or may be transmitted electronically.

(g) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (f) may not release the vehicle to the registered owner of the vehicle or any agents of the registered owner,

unless the registered owner is a rental car agency, until after the termination of the 30-day impoundment period.

(2) The legal owner or the legal owner's agent may not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(h) (1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of 30 days' impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency may not rent another vehicle to the driver of the vehicle that was seized until 30 days after the date that the vehicle was seized.

(3) The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(i) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges authorized under Section 22850.5, and any parking fines, penalties, and administrative fees incurred by the registered owner.

SEC. 2. Section 14602.6 of the Vehicle Code is amended to read:

14602.6. (a) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked or without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle, without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days' impoundment when the legal owner redeems the impounded vehicle. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852.

(c) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (a) of Section 14602.5.

(d) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days' impoundment under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

(C) When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Section 13200) of Chapter 2 of Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division 6.

(D) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.

(E) When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance.

(2) No vehicle shall be released pursuant to this subdivision without presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(e) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(f) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 days' impoundment if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(3) The legal owner or the legal owner's agent presents either lawful foreclosure documents or an affidavit of repossession for the vehicle, and a security agreement or title showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The impounding agency may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

No administrative costs authorized under subdivision (a) of Section 22850.5 shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city or county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency shall not require any documents other than those specified in this paragraph.

As used in this paragraph, ''foreclosure documents'' means an ''assignment'' as that term is defined in subdivision (o) of Section 7500.1 of the Business and Professions Code.

(g) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (f) may not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless the registered owner is a rental car agency, until after the termination of the 30-day impoundment period.

(2) The legal owner or the legal owner's agent may not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's

license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(h) (1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of 30 days' impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency may not rent another vehicle to the driver of the vehicle that was seized until 30 days after the date that the vehicle was seized.

(3) The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(i) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges authorized under Section 22850.5, and any parking fines, penalties, and administrative fees incurred by the registered owner.

(j) The impounding agency shall not be liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with the provisions of this section.

SEC. 3. The Department of Motor Vehicles, in conjunction with the California Highway Patrol, shall educate the public that a vehicle driven by an unlicensed driver can be impounded even if the driver does not own the vehicle.

SEC. 4. Section 2 of this bill incorporates amendments to Section 14602.6 of the Vehicle Code proposed by both this bill and AB 783. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 14602.6 of the Vehicle Code, and (3) this bill is enacted after AB 783, 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 because a local

agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 481

An act to amend Section 97 of the Streets and Highways Code, relating to highways.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 97 of the Streets and Highways Code is amended to read:

97. (a) The department, in consultation with the Department of the California Highway Patrol, shall develop pilot projects in both northern and southern California. The portions of the highways involved in the projects shall be designated and identified as ''Safety Enhancement-Double Fine Zones'' and shall be in the following locations:

(1) On Route 37, between the intersection with Route 121 and the intersection with Route 29.

(2) On Route 4, between the intersection with the Cummings Skyway and the intersection with Route 80.

(3) On Route 74, at both of the following locations:

(A) Between the intersection with Route 5 and the intersection with the Riverside-Orange county line.

(B) Between the junction with Route 15 and the intersection with Seventh Street in the City of Perris.

(4) On Route 46, between the intersection with Route 101 and the junction with Route 41.

(5) On the Golden Gate Bridge.

(6) On Route 12, between the intersection with Walters Road in the City of Suisun and the intersection with Lower Sacramento Road in the City of Lodi.

(7) On Route 138, between the intersection with Avenue T and Pearblossom Highway and the intersection with Interstate Highway Route 15.

(8) On Route 101, between the intersection with Boronda Road and the intersection with the San Benito-Monterey county line.

(9) On Route 152, between the junction with Route 156 at the Don Pacheco ''Y'' and the intersection with Ferguson Road.

(10) On Route 2, between the city limits of La Canada Flintridge and the intersection with Route 39.

(b) (1) The department shall adopt rules and regulations prescribing uniform standards for warning signs to notify motorists that, pursuant to Section 42010 of the Vehicle Code, increased penalties apply for traffic violations that are committed within Safety Enhancement-Double Fine Zones. The rules and regulations adopted by the department shall include, but not be limited to, a requirement that Safety Enhancement-Double Fine Zones be identified with signs stating: ''Special Safety Zone Begins Here'' and ''Special Safety Zone Ends Here.''

(2) The department or local authorities, with respect to highways under their respective jurisdictions, shall place and maintain the warning signs specified in paragraph (1) in areas designated under subdivision (a).

(3) The department shall report to the Legislature on January 1, 2003, on the results of these pilot projects, including a determination of whether the projects were successful. In its report, the department shall update the January 1, 1998, report, and shall provide a detailed analysis on the impact of the pilot projects on highway safety, including, but not limited to, the number of accidents, traffic injuries, and fatalities in the project areas; and, in consultation with the Department of the California Highway Patrol, recommend specific criteria for designation of a highway as a Safety Enhancement-Double Fine Zone. A determination that the projects were successful shall be based upon a showing that a statistically significant decrease in the number of accidents, traffic injuries, and fatalities has occurred in the project areas.

(c) Designation of a highway as a Safety Enhancement-Double Fine Zone does not increase the civil liability of the state under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code or any other provision of law relating to civil liability.

(d) (1) Only the base fine shall be enhanced pursuant to this section.

(2) Notwithstanding any other provision of law, any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine imposed pursuant to this section.

(e) The pilot projects specified in subdivision (a) shall not be elevated in priority for state funding purposes.

(f) (1) Subject to paragraph (3), the County of Monterey, in consultation with the Department of the California Highway Patrol, shall establish and administer a Safety Enhancement-Double Fine Zone

pilot project that meets all of the requirements of this section on County Road 16 (also known as Carmel Valley Road) between the junction with Route 1 and the junction with Camp Stefani Road. The county shall assume all responsibilities that would otherwise accrue to the department for the administration of a pilot project under this section and shall administer the pilot project in accordance with the rules and regulations adopted by the department for the administration of a Safety Enhancement-Double Fine Zone.

(2) The county , in consultation with the California Highway Patrol, shall coordinate the evaluation of the Carmel Valley Road pilot project with the department to enable inclusion of that evaluation in the report submitted by the department to the Legislature under paragraph (3) of subdivision (b).

(3) (A) The county shall submit the evaluation described in paragraph (2) to the department on or before October 1, 2002.

(B) If the county fails to submit the evaluation on or before October 1, 2002, that failure shall result in the immediate termination of the Carmel Valley Road pilot project authorized in this subdivision.

(g) 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. 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 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.

CHAPTER 482

An act to amend Section 121065 of, and to add Section 121056 to, the Health and Safety Code, and relating to biological specimen testing.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 121056 is added to the Health and Safety Code, to read:

121056. (a) Any forensic scientist, including, but not limited to, any criminalist, toxicologist, and forensic pathologist, or any other

employee required to handle or perform DNA or other forensic evidence analysis within the scope of his or her duties, who comes into contact with blood or other bodily fluids on, upon, or through the skin or membranes of his or her person while handling or performing testing on forensic evidence, may petition, ex parte, the court having jurisdiction over the laboratory in which he or she works for an order authorized under this chapter.

The employing agency, officer, or entity of the affected employee may also file an ex parte petition for an order authorized under this chapter. Before filing a petition, the requesting party shall make a reasonable effort to obtain the consent of the person whose blood or bodily fluids is to be tested.

(b) The court shall promptly consider any petition filed pursuant to this section. If the court finds that probable cause exists to believe that a possible transfer of blood, saliva, semen, or other bodily fluid took place between the forensic evidence collected and the forensic scientist, criminalist, toxicologist, forensic pathologist, or any other employee required to handle evidence or perform forensic testing thereon as specified in this section, the court shall promptly order that the existing forensic evidence be tested as provided in this chapter.

(c) (1) Except as provided in paragraph (2), copies of the test results shall be sent to each requesting employee named in the petition, and his or her employing agency, officer, or entity, to the person whose sample was tested, and to the officer in charge and the chief medical officer of the facility in which the person is incarcerated or detained.

(2) The person whose sample was tested, shall be advised that he or she will be informed of the HIV test results only if he or she wishes to be so informed. If the person declines to be informed of the HIV test results, then he or she shall sign a form documenting that refusal. The person's refusal to sign that form shall be construed to be a request to be informed of the HIV test results.

SEC. 2. Section 121065 of the Health and Safety Code is amended to read:

121065. (a) The withdrawal of blood shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, licensed medical technician, or licensed phlebotomist may withdraw blood specimens for the purposes of this chapter.

(b) The court shall order that the blood specimens be transmitted to a licensed medical laboratory and that tests be conducted thereon for medically accepted indications of exposure to or infection by acquired immunity deficiency syndrome (AIDS) virus, AIDS-related conditions, and those communicable diseases for which medically approved testing is readily and economically available as determined by the court.

(c) Copies of test results that indicate exposure to or infection by AIDS, AIDS-related conditions, or other communicable diseases shall also be transmitted to the department.

(d) The test results shall be sent to the designated recipients with the following disclaimer:

"The tests were conducted in a medically approved manner but tests cannot determine exposure to or infections by AIDS or other communicable diseases with absolute accuracy. Persons receiving this test result should continue to monitor their own health and should consult a physician as appropriate."

If the person subject to the test is a minor, copies of the test result shall also be sent to the minor's parents or guardian.

(e) The court shall order all persons, other than the test subject, who receive test results pursuant to Sections 121055, 121056, or 121060, to maintain the confidentiality of personal identifying data relating to the test results except for disclosure that may be necessary to obtain medical or psychological care or advice.

(f) The specimens and the results of tests ordered pursuant to Sections 121055, 121056, and 121060 shall not be admissible evidence in any criminal or juvenile proceeding.

(g) Any person performing testing, transmitting test results, or disclosing information pursuant to the provisions of this chapter shall be immune from civil liability for any action undertaken in accordance with the provisions of this chapter.

CHAPTER 483

An act to amend Section 13730 of the Penal Code, relating to domestic violence.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 13730 of the Penal Code is amended to read:

13730. (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases

involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. The report shall include at least all of the following:

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

(3) A notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon. Any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to Section 12028.5.

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.

CHAPTER 484

An act to amend Section 48900 of the Education Code, and to amend Sections 241.2 and 243.2 of the Penal Code, and to add Section 729.6 to the Welfare and Institutions Code, relating to crime.

[Approved by Governor October 3, 2001. Filed with
Secretary of State October 4, 2001.]

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

SECTION 1. Section 48900 of the Education Code is amended to read:

48900. A pupil may not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act as defined pursuant to one or more of subdivisions (a) to (q), inclusive:

(a) (1) Caused, attempted to cause, or threatened to cause physical injury to another person.

(2) Willfully used force or violence upon the person of another, except in self-defense.

(b) Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object, unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

(e) Committed or attempted to commit robbery or extortion.

(f) Caused or attempted to cause damage to school property or private property.

(g) Stolen or attempted to steal school property or private property.

(h) Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.

(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

(j) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

(*l*) Knowingly received stolen school property or private property.

(m) Possessed an imitation firearm. As used in this section, ''imitation firearm'' means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

(n) Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.

(o) Harassed, threatened, or intimidated a pupil who is a complaining witness or witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.

(p) A pupil may not be suspended or expelled for any of the acts enumerated unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to school activity or attendance that occur at any time, including, but not limited to, any of the following:

(1) While on school grounds.

(2) While going to or coming from school.

(3) During the lunch period whether on or off the campus.

(4) During, or while going to or coming from, a school sponsored activity.

(q) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may suffer suspension, but not expulsion, pursuant to the provisions of this section.

Except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).

(r) A superintendent or principal may use their discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program, for a pupil subject to discipline under this section.

(s) It is the intent of the Legislature that alternatives to suspensions or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities.

SEC. 2. Section 241.2 of the Penal Code is amended to read:

241.2. (a) (1) When an assault is committed on school or park property against any person, the assault is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) When a violation of this section is committed by a minor on school property, the court may, in addition to any other fine, sentence, or as a condition of probation, order the minor to attend counseling as deemed appropriate by the court at the expense of the minor's parents. The court shall take into consideration the ability of the minor's parents to pay, however, no minor shall be relieved of attending counseling because of the minor's parents' inability to pay for the counseling imposed by this section.

(b) ''School,'' as used in this section, means any elementary school, junior high school, four-year high school, senior high school, adult school or any branch thereof, opportunity school, continuation high school, regional occupational center, evening high school, technical school, or community college.

(c) ''Park,'' as used in this section, means any publicly maintained or operated park. It does not include any facility when used for professional sports or commercial events.

SEC. 3. Section 243.2 of the Penal Code is amended to read:

243.2. (a) (1) Except as otherwise provided in Section 243.6, when a battery is committed on school property, park property, or the grounds of a public or private hospital, against any person, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment.

(2) When a violation of this section is committed by a minor on school property, the court may, in addition to any other fine, sentence, or as a condition of probation, order the minor to attend counseling as deemed appropriate by the court at the expense of the minor's parents. The court shall take into consideration the ability of the minor's parents to pay, however, no minor shall be relieved of attending counseling because of the minor's parents' inability to pay for the counseling imposed by this section.

(b) For the purposes of this section, the following terms have the following meanings:

(1) ''Hospital'' means a facility for the diagnosis, care, and treatment of human illness that is subject to, or specifically exempted from, the

licensure requirements of Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) ''Park'' means any publicly maintained or operated park. It does not include any facility when used for professional sports or commercial events.

(3) ''School'' means any elementary school, junior high school, four-year high school, senior high school, adult school or any branch thereof, opportunity school, continuation high school, regional occupational center, evening high school, technical school, or community college.

(c) This section shall not apply to conduct arising during the course of an otherwise lawful labor dispute.

SEC. 4. Section 729.6 is added to the Welfare and Institutions Code, to read:

729.6. If a minor is found to be a person described in Section 602 by reason of the commission of an offense described in Section 241.2 or 243.2 of the Penal Code, the court shall, in addition to any other fine, sentence, or as a condition of probation, order the minor to attend counseling at the expense of the minor's parents. The court shall take into consideration the ability of the minor's parents consistent with Section 730.7 to pay, however, no minor shall be relieved of attending counseling because of the minor's parents' inability to pay for the counseling imposed by this section.

CHAPTER 485

An act to amend Sections 290, 1202.7, and 3000 of the Penal Code, relating to sex offenders.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and,

additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, and place of employment including the name and address of the employer, on a form as may be required by the Department of Justice.

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in

California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in

subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall,

within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside

upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location

information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who

has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision that, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law

enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, ''likely to encounter'' means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, ''reasonably suspects'' means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, ''at risk'' means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) ''Confinement'' means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under

Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) ''Designated law enforcement entity'' means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California, California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, ''law enforcement agency'' means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 2. Section 1202.7 of the Penal Code is amended to read:

1202.7. The Legislature finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the

defendant shall be the primary considerations in the granting of probation. It is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of Section 290 who are on probation to engage them in treatment.

SEC. 3. Section 3000 of the Penal Code is amended to read:

3000. (a) (1) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Prison Terms to execute its duties with respect to parole functions for which the board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

(4) Any finding made pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, that a person is a sexually violent predator shall not toll, discharge, or otherwise affect that person's period of parole.

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (16), or (18) of subdivision (c) of Section 667.5, shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned

for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61, the period of parole shall be five years. Upon the request of the Department of Corrections, and on the grounds that the paroled inmate may pose a substantial danger to public safety, the Board of Prison Terms shall conduct a hearing to determine if the parolee shall be subject to a single additional five-year period of parole. The board shall conduct the hearing pursuant to the procedures and standards governing parole revocation. The request for parole extension shall be made no less than 180 days prior to the expiration of the initial five-year period of parole.

(4) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(5) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1) or (2), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1) and (2) shall be computed from the date of initial parole and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, in no case, except as provided in Section 3064, may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole, and, except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole.

(6) The Department of Corrections shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections or the Board of Prison Terms may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding

restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(7) For purposes of this chapter, the Board of Prison Terms shall be considered the parole authority.

(8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Prison Terms, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of Section 290 who are on probation to engage them in treatment.

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.

CHAPTER 486

An act to amend Section 1808.4 of the Vehicle Code, relating to confidential records.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 1808.4 of the Vehicle Code is amended to read:

1808.4. (a) The home address of any of the following persons, that appears in any record of the department, is confidential if the person requests the confidentiality of that information:

(1) Attorney General.

(2) State public defender.

(3) Members of the Legislature.

(4) Judges or court commissioners.

(5) District attorneys.

(6) Public defenders.

(7) Attorneys employed by the Department of Justice, the office of the State Public Defender, or a county office of the district attorney or public defender.

(8) City attorneys and attorneys who submit verification from their public employer that they represent the city in matters that routinely place them in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts, if those attorneys are employed by city attorneys.

(9) Nonsworn police dispatchers.

(10) Child abuse investigators or social workers, working in child protective services within a social services department.

(11) Active or retired peace officers, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(12) Employees of the Department of Corrections, the Department of the Youth Authority, or the Prison Industry Authority specified in Sections 20017.77 and 20017.79 of the Government Code.

(13) Nonsworn employees of a city police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, and local detention facilities, and local juvenile halls, camps, ranches, and homes, who submit agency verification that, in the normal course of their employment, they control or supervise inmates or are required to have a prisoner in their care or custody.

(14) County counsels assigned to child abuse cases.

(15) Investigators employed by the Department of Justice, a county district attorney, or a county public defender.

(16) Members of a city council.

(17) Members of a board of supervisors.

(18) Federal prosecutors and criminal investigators and National Park Service Rangers working in this state.

(19) Any active or retired city enforcement officer engaged in the enforcement of the Vehicle Code or municipal parking ordinances.

(20) Any police or sheriff department employee designated by the chief of police of the department or the sheriff of the county as being in a sensitive position. Any designation pursuant to this paragraph shall, for purposes of this section, remain in effect for three years subject to

additional designations that, for purposes of this section, shall remain in effect for additional three-year periods.

(21) (A) The spouse or child of any person listed in paragraphs (1) to (20), inclusive, regardless of the spouse's or child's place of residence.

(B) The surviving spouse or child of a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, if the peace officer died in the line of duty.

(b) The confidential home address of any of the persons listed in subdivision (a) shall not be disclosed to any person, except a court, a law enforcement agency, the State Board of Equalization, or any governmental agency to which, under any provision of law, information is required to be furnished from records maintained by the department.

(c) Any record of the department containing a confidential home address shall be open to public inspection, as provided in Section 1808, if the address is completely obliterated or otherwise removed from the record. The home address shall be withheld from public inspection for three years following termination of office or employment except with respect to retired peace officers, whose home addresses shall be withheld from public inspection permanently upon request of confidentiality at the time the information would otherwise be opened. The home address of the surviving spouse or child listed in subparagraph (B) of paragraph (21) of subdivision (a) shall be withheld from public inspection for three years following the death of the peace officer. The department shall inform any person who requests a confidential home address what agency the individual whose address was requested is employed by or the court at which the judge or court commissioner presides.

(d) A violation of subdivision (a) by the disclosure of the confidential home address of a peace officer, as specified in paragraph (11) of subdivision (a), a nonsworn employee of the city police department or county sheriff's office, or the spouses or children of these persons, including, but not limited to, the surviving spouse or child listed in subparagraph (B) of paragraph (21) of subdivision (a), that results in bodily injury to the peace officer, employee of the city police department or county sheriff's office, or the spouses or children of these persons, is a felony.

SEC. 2. Section 1808.4 of the Vehicle Code is amended to read:

1808.4. (a) The home address of any of the following persons, that appears in any record of the department is confidential, if the person requests the confidentiality of that information:

(1) Attorney General.

(2) State public defender.

(3) Members of the Legislature.

(4) Judges or court commissioners.

(5) District attorneys.

(6) Public defenders.

(7) Attorneys employed by the Department of Justice, the office of the State Public Defender, or a county office of the district attorney or public defender.

(8) City attorneys and attorneys who submit verification from their public employer that they represent the city in matters that routinely place them in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts, if those attorneys are employed by city attorneys.

(9) Nonsworn police dispatchers.

(10) Child abuse investigators or social workers, working in child protective services within a social services department.

(11) Active or retired peace officers, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(12) Employees of the Department of Corrections, the Department of the Youth Authority, or the Prison Industry Authority specified in Sections 20017.77 and 20017.79 of the Government Code.

(13) Nonsworn employees of a city police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, and local detention facilities, and local juvenile halls, camps, ranches, and homes, who submit agency verification that, in the normal course of their employment, they control or supervise inmates or are required to have a prisoner in their care or custody.

(14) County counsels assigned to child abuse cases.

(15) Investigators employed by the Department of Justice, a county district attorney, or a county public defender.

(16) Members of a city council.

(17) Members of a board of supervisors.

(18) Federal prosecutors and criminal investigators and National Park Service Rangers working in this state.

(19) Any active or retired city enforcement officer engaged in the enforcement of the Vehicle Code or municipal parking ordinances.

(20) Any employee of a trial court.

(21) Any psychiatric social worker employed by a county.

(22) Any police or sheriff department employee designated by the chief of police of the department or the sheriff of the county as being in a sensitive position. Any designation pursuant to this paragraph shall, for purposes of this section, remain in effect for three years subject to additional designation that, for purposes of this section, shall remain in effect for additional three-year periods.

(23) (A) The spouse or child of any person listed in paragraphs (1) to (22), inclusive, regardless of the spouse's or child's place of residence.

(B) The surviving spouse or child of a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, if the peace officer died in the line of duty.

(b) The confidential home address of any of the persons listed in subdivision (a) shall not be disclosed to any person, except any of the following:

(1) A court.

(2) A law enforcement agency.

(3) The State Board of Equalization.

(4) An attorney in a civil or criminal action that demonstrates to a court the need for the home address, if the disclosure is made pursuant to a subpoena.

(5) Any governmental agency to which, under any provision of law, information is required to be furnished from records maintained by the department.

(c) Any record of the department containing a confidential home address shall be open to public inspection, as provided in Section 1808, if the address is completely obliterated or otherwise removed from the record. The home address shall be withheld from public inspection for three years following termination of office or employment except with respect to retired peace officers, whose home addresses shall be withheld from public inspection permanently upon request of confidentiality at the time the information would otherwise be opened. The home address of the surviving spouse or child listed in subparagraph (B) of paragraph (23) of subdivision (a) shall be withheld from public inspection for three years following the death of the peace officer. The department shall inform any person who requests a confidential home address what agency the individual whose address was requested is employed by or the court at which the judge or court commissioner presides.

(d) A violation of subdivision (a) by the disclosure of the confidential home address of a peace officer, as specified in paragraph (11) of subdivision (a), a nonsworn employee of the city police department or county sheriff's office, or the spouses or children of these persons, including, but not limited to, the surviving spouse or child listed in subparagraph (B) of paragraph (23) of subdivision (a), that results in bodily injury to the peace officer, employee of the city police department or county sheriff's office, or the spouses or children of these persons is a felony.

SEC. 3. Section 2 of this bill incorporates amendments to Section 1808.4 of the Vehicle Code proposed by both this bill and AB 84. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 1808.4 of the Vehicle Code, and (3) this bill is enacted after AB 84, 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.

CHAPTER 487

An act to amend Section 17980 of, and to add and repeal Chapter 7.5 (commencing with Section 17997) of Part 1.5 of Division 13 of, the Health and Safety Code, relating to housing.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. The Legislature finds all of the following:

(a) There are approximately one million substandard housing units in the state.

(b) Substandard housing is disproportionately located in larger inner cities where lower income renters live in the oldest, most neglected, overcrowded housing.

(c) In recent years, local code enforcement agencies have increased their activities to address the growing number of substandard units.

(d) Local code enforcement agencies have found it difficult, if not impossible, to locate the owners of substandard properties to obtain abatement of the substandard conditions.

(e) In efforts to hide true legal ownership, these owners have been known to create sham corporations, limited liability partnerships, out-of-state or offshore corporations, or family trusts.

SEC. 2. Section 17980 of the Health and Safety Code is amended to read:

17980. (a) If any building is constructed, altered, converted, or maintained in violation of any provision of, or of any order or notice that gives a reasonable time to correct that violation issued by an enforcement agency pursuant to, this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part, or if a nuisance exists in any building or upon the lot on which it is situated, the enforcement agency

shall, after 30 days' notice to abate the nuisance, institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance.

(b) (1) Whenever the enforcement agency has inspected or caused to be inspected any building and has determined that the building is a substandard building, the enforcement agency shall commence proceedings to abate the violation by repair, rehabilitation, vacation, or demolition of the building. The enforcement agency shall not require the vacating of a residential building unless it concurrently requires expeditious demolition or repair to comply with this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part. The owner shall have the choice of repairing or demolishing. However, if the owner chooses to repair, the enforcement agency shall require that the building be brought into compliance according to a reasonable and feasible schedule for expeditious repair. The enforcement agency may require vacation and demolition or may itself vacate the building, repair, demolish, or institute any other appropriate action or proceeding, if any of the following occur:

(A) The repair work is not done as scheduled.

(B) The owner does not make a timely choice of repair or demolition.

(C) The owner selects an option which cannot be completed within a reasonable period of time, as determined by the department, for any reason, including, but not limited to, an outstanding judicial or administrative order.

(2) In deciding whether to require vacation of the building or to repair as necessary, the enforcement agency shall give preference to the repair of the building whenever it is economically feasible to do so without having to repair more than 75 percent of the dwelling, as determined by the enforcement agency, and shall give full consideration to the needs for housing as expressed in the local jurisdiction's housing element.

(c) (1) Notwithstanding subdivision (b) and notwithstanding local ordinances, tenants in a residential building shall be provided notice of any violation described in subdivision (a) which affects the health and safety of the occupants and which violates Section 1941.1 of the Civil Code, an order of the code enforcement agency issued after inspection of the premises declaring the dwelling to be substandard, the enforcement agency's decision to repair or demolish, or the issuance of a building or demolition permit following the abatement order of an enforcement agency.

(2) Notice pursuant to this subdivision shall be provided to each affected residential unit by the enforcement agency that issued the order or notice, in the manner prescribed by subdivision (a) of Section 17980.6.

(d) All notices issued by the enforcement agency to correct violations or to abate nuisances shall contain a provision notifying the owner that, in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year. In addition, in Los Angeles County, the notice shall contain a provision notifying the owner that within 10 days of recordation of a notice of substandard conditions or similar document, the owner is required to comply with Section 17997.

(e) The enforcement agency may charge the owner of the building for its postage or mileage cost for sending or posting the notices required to be given by this section.

SEC. 3. Chapter 7.5 (commencing with Section 17997) is added to Part 1.5 of Division 13 of the Health and Safety Code, to read:

CHAPTER 7.5. REGISTRATION OF OWNERS OF SUBSTANDARD RESIDENTIAL PROPERTY

17997. (a) Where a code enforcement agency has recorded with the county recorder a notice of substandard conditions pursuant to Section 17985, of a substandard building, as defined in Section 17920.3, or other document stating that a multiunit residential rental property, owned by a nongovernmental entity, is untenantable, the private owner of that building shall, within 10 days of recordation, submit to, and maintain with, the Board of Supervisors of Los Angeles County or its designee, in a manner to be determined by the board or its designee, the following information:

(1) The name, address, telephone number, and California driver's license number or identification card number of the property owner, if a California resident.

(2) If the property is owned by a corporation, limited liability company, partnership, limited partnership, trust, or real estate investment trust, the owner shall designate a person who resides in this state and who manages the property. The owner shall designate this person in a manner to be determined by the Board of Supervisors of Los Angeles County or its designee. This designation shall be accompanied by a notarized statement by this designated person that she or he accepts the designation. The information shall include the name, address, telephone number, and California driver's license number or identification card number of the person who manages the property. Where applicable, the same information for the following person shall be provided:

(A) For a corporation, a corporate officer.

(B) For a limited liability company, the managing or administrative member.

(C) For a partnership or a limited partnership, a general partner.

(D) For a trust, a trustee.

(E) For a real estate investment trust, a general partner or an officer.

(3) If the property is owned by a person who resides outside this state, the owner shall designate with the Board of Supervisors of Los Angeles County or its designee a person who resides in this state and who manages the property. The owner shall designate this person in a manner to be determined by the board or its designee. This designation shall be accompanied by a notarized statement by the designated person that accepts the designation. The information shall include the name, address, telephone number, and California driver's license number or identification card number of the person.

(4) The street address and parcel number of the property.

(5) The year that the building was built.

(6) The number of units in the building.

(b) The owner shall update the information required by this section within 10 days after there is a change in the information.

17997.2. All records, files, and documents that are required by this chapter shall be available only to local code enforcement officials and tenants of the subject premises, except that the department may disclose only the owner's name and address to the subject property's tenants.

17997.3. In an action brought pursuant to Section 1161 of the Code of Civil Procedure, the tenant may raise as an affirmative defense the owner's failure to comply with Section 17997, unless the proceeding is brought pursuant to Section 11571.1.

17997.5. Nothing in this chapter shall prevent a local government body from adopting and enforcing laws consistent with this chapter. Where local laws duplicate or supplement this chapter, this chapter shall be construed as providing alternative remedies and not preempting the field of the subject matter.

17997.6. A person who fails to comply with Section 17997 is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding five thousand dollars ($5,000), or both.

17997.7. The County of Los Angeles shall, on or before July 1, 2004, prepare and provide a report to the Assembly Committee on Housing and Community Development and the Senate Committee on Housing and Community Development on the effectiveness of the reporting requirements described in this chapter. The report shall include, but not be limited to, the number of notices of substandard conditions recorded, the number of owners or agents registered, the number of owners prosecuted for failure to comply with this chapter, and

the number of affected rentals. In addition, the report shall contain an analysis of the effectiveness of the pilot program in identifying owners of substandard residential rental properties and obtaining abatement of code violations. The county board of supervisors shall consult with local code enforcement officials, prosecutors, tenant advocate organizations, and apartment owner associations in the preparation of the report.

17997.8. This chapter shall apply only to the County of Los Angeles as a pilot project and 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. 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.

CHAPTER 488

An act to amend Sections 23357.2, 23358.3, 23366.3, 23389, 23390, 23399, 23399.4, 24042, 24042.5, 24045.7, 24045.11, 24045.85, and 24048 of, to repeal Sections 23320.2 and 23320.3 of, and to repeal and add Section 23320 of, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. The Legislature finds and declares that the regulation of the manufacture, importation, supply, and sale of alcoholic beverages continues to be among the highest priorities of the state. The Department

of Alcoholic Beverage Control is charged with the regulatory oversight of some 70,000 licensees throughout the State of California, as well as investigating in excess of 10,000 new and transfer applications per year. Because the department is a special fund department, it has been required to perform its functions with a budget derived solely from the fees paid by licensees. Yet, these fees have not been increased to keep pace with inflation or rising costs of operating the department since 1978. As a result of the neglect of insuring appropriate funding levels, the department is facing a budget crisis, with the reduction in enforcement capabilities being imminent. Failure to correct the immediate funding shortfall, as well as ensuring the fiscal integrity of the department in the future, will significantly impede the department's ability to meet its continuing obligations to protect the safety, welfare, health, peace, and morals of the people of the state. It is the intent of the Legislature in enacting this act to return the department to an acceptable level of funding by adjusting license fees over a three-year period to a level consistent with the increased costs associated with the regulation of the licensees, and assuring a continued level of reasonable and responsible funding into the future through annual adjustments in the Budget Act.

SEC. 2. Section 23320 of the Business and Professions Code is repealed.

SEC. 3. Section 23320 is added to the Business and Professions Code, to read:

23320. (a) The following are the types of licenses and the annual fees to be charged therefor:

Name & License Type Number:	Fee Effective 01/01/02	Fee Effective 01/01/03	Fee Effective 01/01/04
(1) Beer manufacturer:			
(a) Beer manufacturers that produce 60,000 barrels or less a year (Type 23)	$127.00	$134.00	$140.00
(b) All other beer manufacturers (Type 1)	$1,043.00	$1,098.00	$1,153.00
(c) Branch Office —Small Beer Manufacturers (Type 23D)	$69.00	$71.00	$73.00
—Beer Manufacturers (Type 1D)	$69.00	$71.00	$73.00

(2) Winegrower or wine blender (to be computed only on the gallonage produced or blended) (Type 2 & Type 22)			
—5,000 gallons or less	$34.00	$44.00	$54.00
—Over 5,000 gallons to 20,000 gallons per year	$65.00	$80.00	$99.00
—Over 20,000 to 100,000 gallons per year	$130.00	$155.00	$180.00
—Over 100,000 to 200,000 gallons per year	$180.00	$205.00	$237.00
—Over 200,000 gallons to 1,000,000 gallons per year	$250.00	$300.00	$351.00
—For each 1,000,000 gallons or fraction thereof over 1,000,000 gallons an additional	$170.00	$200.00	$229.00
Winegrower (Branch Office) – (Type 2D)	$69.00	$71.00	$73.00
(3) Brandy manufacturer (Type 3)	$212.00	$223.00	$234.00
Brandy manufacturer (Branch Office) (Type 3D)	$204.00	$210.00	$215.00
(4) Distilled spirits manufacturer (Type 4) . .	$348.00	$366.00	$384.00
(5) Distilled spirits manufacturer's agent (Type 5)	$348.00	$366.00	$384.00
(5a) California winegrower's agent (Type 27)	$348.00	$366.00	$384.00
(6) Still (Type 6)	$33.00	$46.00	$58.00
(7) Rectifier (Type 7)	$348.00	$366.00	$384.00

(7a) Distilled spirits rectifier's general license (Type 24)	$348.00	$366.00	$384.00
(8) Wine rectifier (Type 8)	$348.00	$366.00	$384.00
(9) Beer & wine importer (Type 9)	$25.00	$42.00	$58.00
(10) Beer & wine importer's general license (Type 10)	$147.00	$202.00	$256.00
(11) Brandy importer (Type 11)	$25.00	$42.00	$58.00
(12) Distilled spirits importer (Type 12)	$25.00	$42.00	$58.00
(13) Distilled spirits importer's general license (Type 13)	$348.00	$366.00	$384.00
(14) Public warehouse (Type 14)	$33.00	$46.00	$58.00
(15) Customs broker (Type 15)	$33.00	$46.00	$58.00
(16) Wine broker (Type 16)	$71.00	$75.00	$78.00
(17) Beer & wine wholesaler (Type 17)	$147.00	$202.00	$256.00
(18) Distilled spirits wholesaler (Type 18) . . .	$348.00	$366.00	$384.00
(18a) California brandy wholesaler (Type 25) . . .	$348.00	$366.00	$384.00
(19) Industrial alcohol dealer (Type 19)	$71.00	$75.00	$78.00
(20) Retail package off–sale beer & wine (Type 20) . .	$105.00	$157.00	$209.00
(21) Retail package off–sale general license (Type 21) and controlled access cabinet permit (Type 66)	$431.00	$448.00	$464.00

(22) On–sale beer (Type 40 & Type 61); On–sale beer & wine (Type 42); Special on–sale beer & wine (Theater) (Type 69); and Special on–sale beer & wine (Symphony) (Type 65)	$204.00	$210.00	$215.00
(23) On–sale beer & wine eating place (Type 41) . .	$236.00	$263.00	$290.00
(24) On–sale beer & wine license for trains (per train) (Type 43)	$48.00	$68.00	$87.00
(25) On–sale beer license for fishing party boats (per boat) (Type 44)	$59.00	$73.00	$87.00
(26) On–sale beer & wine license for boats (per boat) (Type 45)	$75.00	$81.00	$87.00
(27) On–sale beer & wine license for airplanes (per scheduled flight) (Type 46)	$48.00	$68.00	$87.00

(28) On–sale general license (Types 47, 48, 57, 70, 75, 78, 78D (for 78D see Section 23396.2)) and club caterer's permit (Type 58):			
—In cities of 40,000 population or over	$698.00	$715.00	$731.00
—In cities of less than 40,000 but more than 20,000 population	$503.00	$520.00	$536.00
—In all other localities	$443.00	$460.00	$476.00
Duplicate on–sale general license (Types 47D, 48D, 57D) and portable bar license (Type 68):			
—In cities of 40,000 population or over . . .	$499.00	$513.00	$526.00
—In cities of less than 40,000 but more than 20,000 population . . .	$295.00	$303.00	$311.00
—In all other localities	$233.00	$239.00	$245.00

(29) On–sale general license for seasonal business (Type 49):			
—In cities of 40,000 population or over (per quarter)	$176.00	$181.00	$186.00
—In cities of less than 40,000 but more than 20,000 population (per quarter)	$126.00	$129.00	$132.00
—In all other localities (per quarter)	$109.00	$112.00	$115.00
Duplicate on–sale general license for seasonal business (Type 49D):			
—In cities of 40,000 population or over (per quarter)	$126.00	$129.00	$132.00
—In cities of less than 40,000 but more than 20,000 population (per quarter)	$74.00	$76.00	$78.00
—In all other localities (per quarter)	$59.00	$61.00	$62.00

(30) (a) On–sale general license for bona fide clubs, (b) Club license (issued under Article 4 of this chapter), or (c) Veterans' club license (issued under Article 5 (commencing with Section 23450) of this chapter) (Types 50, 51, 52, & 64):			
—In cities of 40,000 population or over . . .	$400.00	$411.00	$422.00
—In cities of less than 40,000 but more than 20,000 population . . .	$301.00	$309.00	$317.00
—In all other localities	$267.00	$274.00	$281.00
(31) On–sale general license for trains and sleeping cars (Type 53)	$156.00	$160.00	$164.00
—Duplicate on–sale general license for trains and sleeping car companies (Type 53D)	$46.00	$52.00	$58.00
(32) On–sale general license for boats (Type 54)	$402.00	$413.00	$424.00
(33) On–sale general license for airplanes (Type 55) .	$402.00	$413.00	$424.00
—Duplicate on–sale general license for air common carriers (Type 55D)	$32.00	$45.00	$58.00

(34) On–sale general license for vessels of more than 1,000 tons burden (Type 56) and for Maritime Museum (Type 76)	$156.00	$160.00	$164.00
—Duplicate on–sale general license for vessels of more than 1,000 tons burden (Type 56D) and for Maritime Museum (Type 76D)	$46.00	$52.00	$58.00
(35) On–sale general bona fide public eating place intermittent dockside license for vessels of more than 7,000 tons displacement (Type 62) .	$435.00	$447.00	$459.00
(36) On–sale special beer & wine license for hospitals, convalescent homes, and rest homes (Type 63) . . .	$68.00	$70.00	$72.00
(37) On–sale beer & wine seasonal (Type 59) and on–sale beer seasonal (Type 60)			
—Operating period 3–9 months	$161.00	$171.00	$180.00
—Operating period 3–6 months	$108.00	$115.00	$122.00

(b) Beginning January 1, 2005, and each January 1 thereafter, the department may adjust each of the fees specified in the foregoing section by increasing each fee by an amount not to exceed the percentage that the Consumer Price Index (United States Bureau of Labor Statistics, West Region, All Urban Consumers, All Items, Base Period 1982–84=100) for the preceding April 2003, and each April annually thereafter, has increased under the same index over the month of April 2002, which shall be the base period. No fee shall be decreased pursuant to this adjustment below the fee currently in effect on each December 31. In the event that this index is discontinued, the department shall consult

with the Department of Finance to convert the increase calculations to an index then available. When approved by the Department of Finance, the new index shall replace the discontinued index.

(c) The department shall calculate the percentage increase as specified in subdivision (b) and shall apply this increase to each fee. The increase to each fee shall be rounded to the nearest whole dollar. The adjusted fee list shall be published by the department and transmitted to the Legislature for approval as part of the department's budget submission for the fiscal year in which the adjusted fees would be implemented. This adjustment of fees and publication of the adjusted fee list is not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 4. Section 23320.2 of the Business and Professions Code is repealed.

SEC. 5. Section 23320.3 of the Business and Professions Code is repealed.

SEC. 6. Section 23357.2 of the Business and Professions Code is amended to read:

23357.2. (a) An out-of-state beer manufacturer's certificate may be issued by the department upon the written undertaking and agreement by the applicant:

(1) That it and its agents and all agencies within this state controlled by it shall comply with all laws of this state and all rules of the department with respect to the sale of alcoholic beverages, including, but not limited to, Chapter 12 (commencing with Section 25000) of Division 9, and Section 25509, to the same extent as licensees.

(2) That it shall make available, both in California and outside the state, for inspection and copying by the department, all books, documents, and records, located both within and without this state, which are pertinent to the activities of the applicant, its agents and agencies within this state controlled by it, in connection with the sale and distribution of its products within this state.

(b) The department may suspend or revoke an out-of-state beer manufacturer's certificate for cause in the manner provided for the suspension or revocation of licenses, and after a hearing which shall be held in the City of Sacramento or in any other county seat in this state as the department determines to be convenient to the holder of an out-of-state certificate.

(c) The annual fees for an out-of-state beer manufacturer's certificate shall be fifty-four dollars ($54) for certificates issued during the 2002 calendar year, fifty-seven dollars ($57) for certificates issued during the 2003 calendar year, sixty dollars ($60) for certificates issued during the 2004 calendar year, and for certificates issued during the years thereafter,

the annual fee shall be calculated pursuant to subdivisions (b) and (c) of Section 23320.

(d) All money collected from the fees provided for in this section shall be deposited in the Alcohol Beverage Control Fund as provided by Section 25761.

SEC. 7. Section 23358.3 of the Business and Professions Code is amended to read:

23358.3. A wine grape grower's storage license authorizes the holder to store bulk wine, made from grapes produced by the holder, on the premises of a licensed winegrower and to sell that wine, within this state, to winegrowers, distilled spirits manufacturers, brandy manufacturers, wine blenders, and vinegar producers.

The annual fee for a wine grape grower's storage license shall be sixty dollars ($60) for licenses issued during the 2002 calendar year, sixty-four dollars ($64) for licenses issued during the 2003 calendar year, sixty-seven dollars ($67) for licenses issued during the 2004 calendar year, and for licenses issued during the years thereafter, the annual fee shall be calculated pursuant to subdivisions (b) and (c) of Section 23320.

SEC. 8. Section 23366.3 of the Business and Professions Code is amended to read:

23366.3. (a) An out-of-state distilled spirits shipper's certificate may be issued by the department upon the written undertaking and agreement by the applicant:

(1) That it and its agents and all agencies within this state controlled by it shall comply with all laws of this state and all rules of the department with respect to the sale of alcoholic beverages;

(2) That it shall make available, both in California and outside the state, for inspection and copying by the department, all books, documents, and records, located both within and without the state, which are pertinent to the activities of the applicant, its agents and agencies within this state controlled by it, in connection with the sale and distribution of its products within this state.

(b) The department may suspend or revoke an out-of-state distilled spirits shipper's certificate for cause in the manner provided for the suspension and revocation of licenses, and after a hearing which shall be held in the City of Sacramento or in such other county seat in the state as the department determines to be convenient to the holder of an out-of-state distilled spirits shipper's certificate.

(c) The annual fees for an out-of-state distilled spirits shipper's certificate shall be fifty-four dollars ($54) for certificates issued during the 2002 calendar year, fifty-seven dollars ($57) for certificates issued during the 2003 calendar year, sixty dollars ($60) for certificates issued during the 2004 calendar year, and for certificates issued during the years

thereafter, the annual fee shall be calculated pursuant to subdivisions (b) and (c) of Section 23320.

(d) All money collected from the fees provided for in this section shall be deposited in the Alcohol Beverage Control Fund, as provided by Section 25761.

SEC. 9. Section 23389 of the Business and Professions Code is amended to read:

23389. A licensed beer manufacturer may sell and deliver beer from branch offices located away from his or her place of manufacture and exercise all his or her license privileges, other than manufacture, at or from the branch offices. The department shall upon request issue to a beer manufacturer a duplicate of his or her original license which shall authorize the maintenance and operation of each branch declared and designated by him or her, upon the payment for each duplicate of the fee specified in Section 23320.

Notwithstanding the provisions of any other section of this division, the duplicate license shall be issued forthwith upon the application therefor. In the event any protest is received by the department concerning the issuance of the duplicate license, the protest shall be considered as an accusation against the licensee and a hearing had thereon as if an accusation had been filed.

For 30 days from the date of the issuance of the duplicate license, no retail sales of beer shall be made at any branch office for which a duplicate license is issued pursuant to this section.

SEC. 10. Section 23390 of the Business and Professions Code is amended to read:

23390. A licensed winegrower or brandy manufacturer, in addition to exercising all the privileges of his or her license at his or her licensed premises, may exercise all his or her license privileges at or from branch offices or warehouses, or United States bonded wine cellars located away from his or her place of production or manufacture, other than production or manufacture, the sale of wine or brandy to consumers for consumption on the premises in a bona fide eating place, and the sale or delivery of wine to consumers in containers supplied, furnished, or sold by the consumer. The department shall, upon request, issue to a winegrower or brandy manufacturer a duplicate of his or her original license for a location or locations other than his or her wine production or brandy manufacture premises. The duplicate license authorizes the maintenance and operation of each branch or warehouse or United States bonded wine cellar declared and designated by the winegrower or brandy manufacturer at the location for which the duplicate license is issued. The fee for each duplicate winegrower's license and for each duplicate brandy manufacturer's license is as specified in Section 23320.

Notwithstanding the provisions of any other section of this division, a duplicate winegrower's license or duplicate brandy manufacturer's license shall be issued forthwith upon the application therefor. In the event any protest is received by the department concerning the issuance of the duplicate license, the protest shall be considered as an accusation against the licensee and a hearing had thereon as if an accusation had been filed.

For 30 days from the date of the issuance of the duplicate license, no retail sales of wine or brandy shall be made at any branch office for which a duplicate winegrower's license or duplicate brandy manufacturer's license is issued pursuant to this section.

Notwithstanding any other provision of law, the department may allow any person who held more than one original winegrower's license, on or before January 1, 1981, to transfer any duplicate license which has been issued, on or before January 1, 1981, on any of the original winegrower's licenses to any other original winegrower's license held by that person, on or before January 1, 1981, provided that the licensee cancels the original winegrower's license from which any duplicate license is transferred. This subdivision shall not authorize any person to acquire any additional duplicate licenses other than those held by that licensee on or before January 1, 1981.

SEC. 11. Section 23399 of the Business and Professions Code is amended to read:

23399. (a) An on-sale general license authorizes the sale of beer, wine, and distilled spirits for consumption on the premises where sold. Any licensee under an on-sale general license, a club license, or a veterans' club license may apply to the department for a caterer's permit. A caterer's permit under an on-sale general license shall authorize the sale of beer, wine, and distilled spirits for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events held any place in the state approved by the department. A caterer's permit under a club license or a veterans' club license shall authorize sales at these events only upon the licensed club premises.

(b) Any licensee under an on-sale general license or an on-sale beer and wine license may apply to the department for an event permit. An event permit under an on-sale general license or an on-sale beer and wine license shall authorize, at events held no more frequently than one day in any single calendar quarter, the sale of beer, wine, and distilled spirits only under an on-sale general license or beer and wine only under an on-sale beer and wine license for consumption on property adjacent to the licensed premises and owned or under the control of the licensee. This property shall be secured and controlled by the licensee and not visible to the general public. For purposes of this subdivision, ''calendar quarter'' means January 1 to March 31, inclusive, April 1 to June 30,

inclusive, July 1 to September 30, inclusive, or October 1 to December 31, inclusive, of any calendar year.

(c) This section shall in no way limit the power of the department to issue special licenses under the provisions of Section 24045 or to issue daily on-sale general licenses under the provisions of Section 24045.1. Consent for sales at each event shall be first obtained from the department in the form of a catering or event authorization issued pursuant to rules prescribed by it. Any event authorization shall be subject to approval by the appropriate local law enforcement agency. Each catering or event authorization shall be issued at a fee not to exceed ten dollars ($10) and this fee shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

(d) At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the act pertaining to the conduct of on-sale premises and violation of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises.

(e) The fee for a caterer's permit for a licensee under an on-sale general license or an event permit for a licensee under an on-sale general license or an on-sale beer and wine license shall be one hundred four dollars ($104) for permits issued during the 2002 calendar year, one hundred seven dollars ($107) for permits issued during the 2003 calendar year, one hundred ten dollars ($110) for permits issued during the 2004 calendar year, and for permits issued during the years thereafter, the annual fee shall be calculated pursuant to subdivisions (b) and (c) of Section 23320, and the fee for a caterer's permit for a licensee under a club license or a veterans' club license shall be as specified in Section 23320, and the permit may be renewable annually at the same time as the licensee's license. A caterer's or event permit shall be transferable as a part of the license.

SEC. 12. Section 23399.4 of the Business and Professions Code is amended to read:

23399.4. (a) A licensee under a winegrower's license may apply to the department for a certified farmers' market sales permit. A certified farmers' market sales permit shall authorize the licensee, a member of the licensee's family, or an employee of the licensee to sell wine produced and bottled by the winegrower entirely from grapes grown by the winegrower at a certified farmers' market at any place in the state approved by the department. The permit may be issued for up to 12 months but shall not be valid for more than one day a week at any single specified certified farmers' market location. A winegrower may hold more than one certified farmers' market sales permit. The department shall notify the city, county, or city and county and applicable law

enforcement agency where the certified farmers' market is to be held of the issuance of the permit. A ''certified farmers' market'' means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code, and the regulations adopted pursuant thereto.

(b) The licensed winegrower eligible for the certified farmers' market sales permit shall not sell more than 5,000 gallons of wine annually pursuant to all certified farmers' market sales permits held by any single winegrower. The licensed winegrower shall report total certified farmers' market wine sales to the department on an annual basis. The report may be included within the annual report of production submitted to the department, or pursuant to any regulation as may be prescribed by the department.

(c) The fee for any permit issued pursuant to this section shall be forty-four dollars ($44) for permits issued during the 2002 calendar year, forty-seven dollars ($47) for permits issued during the 2003 calendar year, fifty dollars ($50) for permits issued during the 2004 calendar year, and for permits issued during the years thereafter, the annual fee shall be calculated pursuant to subdivisions (b) and (c) of Section 23320.

(d) All money collected as fees pursuant to this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

SEC. 13. Section 24042 of the Business and Professions Code is amended to read:

24042. Any licensee under an on-sale general license or an on-sale general license for seasonal business who maintains upon or within the premises for which the license is issued more than one room in which there is regularly maintained a fixed counter or service bar at which distilled spirits are served to members of the public for consumption within the licensed premises shall obtain from the department, and the department may upon request issue, a duplicate of his or her original license for each room, in excess of one, containing a fixed counter or service bar and shall post a duplicate of his or her original license in each room. Failure to obtain the duplicate licenses and to pay the fees and renewal fees, as specified in Section 23320, shall subject the licensee to the penalties imposed by this division for failure to obtain an original license or to pay the renewal fees therefor.

The duplicate license may be issued to a room reserved for the exclusive use of designated patrons, provided that the department shall, in the event the license is issued, endorse upon the license the terms and conditions under which the privileges conferred by the said license may be exercised, and provided further that upon the receipt by the department of the request for the duplicate license written notice thereof which shall consist of a copy of the request shall immediately be mailed

by the department to the sheriff or chief of police within whose jurisdiction the premises are situated and no duplicate license shall be issued by the department until at least 30 days after such mailing. Upon receipt by the department within 30 days of a protest by the sheriff or chief of police within whose jurisdiction the premises are situated, the department shall not issue the duplicate license until after a hearing is held by the department within the county or city affected and said hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code and the department shall have all the powers granted therein.

A licensee under an on-sale general license, or an on-sale general license for seasonal business, issued for a bona fide public eating place may obtain a duplicate license or licenses under this section for rooms which constitute public premises, as defined in Section 23039, and a licensee under the license issued for public premises may obtain a duplicate license or licenses under this section for rooms which constitute bona fide public eating places, except that a duplicate license or licenses for rooms which constitute bona fide public eating places shall only be issued after the department has made the investigation and determination required by Section 23787. Rooms which constitute bona fide public eating places shall not be considered public premises, as defined in Section 23039, and the provisions of this division applicable solely to these public premises shall not be applicable to these rooms.

SEC. 14. Section 24042.5 of the Business and Professions Code is amended to read:

24042.5. Notwithstanding any other provision of this division, any licensee under an on-sale general or on-sale general license for seasonal business who has a premises with a fixed counter or service bar in one room of the premises for the service of distilled spirits to members of the public for consumption on the premises and who has other rooms on the premises which can be utilized for the same purposes by means of a portable bar counter may elect to request the department to license the portable bar counter itself rather than the additional rooms as provided in Section 24042. However, if two or more portable bar counters are utilized at the same time, in the same room, only one portable bar shall be required to be licensed. The licensee shall pay to the department at the time of the application for each portable bar counter an amount equal to the license fee payable for a like period for the distilled spirits privileges of the original on-sale general license or on-sale general license for seasonal business. Failure to obtain the portable bar counter license and to pay the fees and renewal fees, as specified in Section 23320, shall subject the licensee to the penalties imposed by this division for failure to obtain an original license or pay the renewal fees therefor.

SEC. 15. Section 24045.7 of the Business and Professions Code is amended to read:

24045.7. (a) (1) The department may issue a special on-sale general license to any nonprofit theater company that is exempt from the payment of income taxes under Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of the United States. Any special on-sale general license issued to a nonprofit theater company pursuant to this subdivision shall be for a single specified premises only.

(2) Theater companies holding a license under this subdivision may, subject to Section 25631, sell and serve alcoholic beverages to ticketholders only during, and two hours prior to and one hour after, a bona fide theater performance of the company.

(3) Notwithstanding any other provision in this division, a licensed manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, employee, or agent of that person, may serve on the board of trustees of a nonprofit theater company operating a theater in Napa County licensed pursuant to this subdivision.

(4) An applicant for such a license shall accompany the application with an original issuance fee of one thousand dollars ($1,000) and shall pay an annual renewal fee as provided in Section 23320.

(5) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exceptions established by this subdivision to the general prohibition against tied interests must be limited to their express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

(b) (1) The department may issue a special on-sale beer and wine license to any nonprofit theater company which has been in existence for at least eight years, which for at least six years has performed in facilities leased or rented from a local county fair association, and which is exempt from the payment of income taxes under Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of the United States.

(2) Theater companies holding a license under this subdivision may, subject to Section 25631, sell and serve beer and wine to ticketholders only during, and two hours prior to, a bona fide theater performance of the company. Beer and wine may be sold from an open-air concession stand which is not attached to the theater building itself, if the concession

stand is located on fair association property within 30 feet of the theater building and the alcoholic beverages sold are consumed only in the theater building itself, or within a designated outdoor area in front of and between the concession stand and the main public entrance to the theater building. Nothing in this section permits a theater company to sell beer or wine during the run of a county fair.

(3) An applicant for a license under this subdivision shall accompany the application with an original issuance fee equal to the annual renewal fee and shall pay an annual renewal fee as provided in Section 23320.

SEC. 16. Section 24045.11 of the Business and Professions Code is amended to read:

24045.11. The department may issue a special on-sale wine license to an establishment licensed to do business as a bed and breakfast inn.

''Bed and breakfast inn,'' as used in this section, means an establishment of 20 guestrooms or less, which provides overnight transient occupancy accommodations, which serves food only to its registered guests, which serves only a breakfast or similar early morning meal, and with respect to which the price of the food is included in the price of the overnight transient occupancy accommodation. For purposes of this section, ''bed and breakfast inn'' refers to an establishment as to which the predominant relationship between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of some other legal relationships as between some occupants and the owner or operator is immaterial.

An establishment holding a license under this section is authorized to serve wine purchased from a licensed winegrower or wine wholesaler only to registered guests of the establishment. Wine shall not be given away to guests but the price of the wine shall be included in the price of the overnight transient occupancy accommodation. Guests shall not be permitted to remove wine served in the establishment from the grounds.

The applicant for a license shall accompany the application with an original fee of fifty dollars ($50) and shall pay an annual renewal fee of six dollars ($6) for each guestroom in the establishment until December 31, 2004, and for each year thereafter the annual fee shall be calculated pursuant to subdivisions (b) and (c) of Section 23320.

SEC. 17. Section 24045.85 of the Business and Professions Code is amended to read:

24045.85. The department may issue a special on-sale beer and wine license to any symphony association organized as a nonprofit corporation more than 30 years before the date of application and which is exempt from the payment of income taxes under Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of 1954 of the United States.

A symphony association holding a license under this section may sell and serve alcoholic beverages only to persons attending concerts on the licensed premises. Sales of alcoholic beverages shall only be permitted, subject to Section 25631, during the period commencing two hours before the performance and ending one hour after the performance.

The applicant for a license shall accompany the application with an original fee of three hundred dollars ($300) and shall pay an annual renewal fee as provided in Section 23320.

Original licenses may be issued pursuant to this section until January 1, 1987; thereafter no new licenses shall be issued. Licenses originally issued pursuant to this section prior to January 1, 1987, may continue to be renewed annually by the holder thereof.

SEC. 18. Section 24048 of the Business and Professions Code is amended to read:

24048. Every license, other than a temporary license or a daily on-sale general license issued pursuant to Section 24045.1, is renewable unless the license has been revoked if the renewal application is made and the fee therefor is paid. All licenses expire at 12 midnight on the last day of the month posted on the license. All licenses issued shall be renewed as follows:

(a) On or before the first of the month preceding the month posted on the license, the department shall mail to each licensee at his or her licensed premises, or at any other mailing address that the licensee has designated, an application to renew the license.

(b) The application to renew the license may be filed before the license expires upon payment of the annual fee as set forth in Section 23320, 23358.3, or 23399.

(c) For 60 days after the license expires, the license may be renewed upon payment of the annual renewal fee as set forth in Section 23320, 23358.3, or 23399, plus a penalty fee that shall be equal to 50 percent of the annual fee.

(d) Unless otherwise terminated, or unless renewed pursuant to subdivision (b) or (c) of this section, a license that is in effect on the month posted on the license continues in effect through 2 a.m. of the 60th day following the month posted on the license, at which time it is automatically canceled.

(e) On or before the 10th day preceding the cancellation of a license, the department shall mail a notice of cancellation to each licensee who has not either filed an application to renew his or her license or notified the department of his or her intent not to do so. Failure to mail the renewal application in accordance with subdivision (a) or to mail the notice provided in this subdivision shall not continue the right to a license.

(f) A license that has been canceled pursuant to subdivision (d) of this section may be reinstated during the 30 days immediately following cancellation upon payment by cashier's check or money order of the annual renewal fee as set forth in Section 23320, 23358.3, or 23399, plus a penalty fee that shall be equal to 100 percent of the annual fee. A license that has been canceled pursuant to subdivision (d) of this section and that has not been reinstated within 30 days pursuant to this subdivision is automatically revoked on the 31st day after the license has been canceled.

(g) No renewal application shall be deemed filed within the meaning of this section unless the document itself has been actually delivered to, and the required renewal fee has been paid at, any office of the department during office hours, or unless both the document and fee have been filed and remitted pursuant to Section 11003 of the Government Code.

SEC. 19. The Department of Alcoholic Beverage Control shall conduct a study to assess its existing automation and information technology systems and identify necessary improvements and possible enhancements. The results of this study shall be reported to the Legislature on or before May 15, 2002. The report shall also identify potential revenue sources that could be used to fund these improvements and enhancements including, but not limited to, receiving federal grants, earmarking a portion of any future Consumer Price Index adjustments authorized by Section 23320 of the Business and Professions Code, or using the revenue from the fee for services proposed in Section 21 of this act.

SEC. 20. The Department of Alcoholic Beverage Control shall also study the feasibility of charging a fee to applicants for, and holders of, licenses for services provided by the department within existing programs, and report the results of the study to the Legislature by May 15, 2002. In conducting this study, the department shall take into consideration whether the public would benefit from a "fee for service" policy.

CHAPTER 489

An act relating to lands granted in trust to the City and County of San Francisco.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. For purposes of this chapter, the following terms have the following meanings:

(a) ''BCDC'' means the San Francisco Bay Conservation and Development Commission established pursuant to Section 66620 of the Government Code.

(b) ''Bay jurisdiction'' means the jurisdiction, powers, and duties of BCDC pursuant to Title 7.2 (commencing with Section 66600) of the Government Code within the area defined in subdivision (a) of Section 66610 of the Government Code.

(c) ''Bay Plan'' means the San Francisco Bay Plan as adopted and administered by BCDC pursuant to Title 7.2 (commencing with Section 66600) of the Government Code, including all amendments thereto.

(d) ''Boundary of the Port of San Francisco'' means that line defining the boundary of ''Parcel A'' in the description of the lands transferred in trust to the City and County of San Francisco pursuant to Chapter 1333 of the Statutes of 1968, recorded on May 14, 1976, in Book C169, pages 573 to 664, inclusive, in the City and County of San Francisco Recorder's Office.

(e) ''Brannan Street Wharf'' means a major San Francisco waterfront park in the area of Piers 34 and 36, as identified in the Special Area Plan.

(f) ''Burton Act'' means Chapter 1333 of the Statutes of 1968, as amended.

(g) ''Burton Act trust'' means the statutory trust imposed by the Burton Act (Chapter 1333 of the Statutes of 1968, as amended), pursuant to which the state conveyed to the City and County of San Francisco, in trust, by transfer agreement, and subject to certain terms, conditions, and reservations, the state's interest in certain tide and submerged lands.

(h) ''City'' means the City and County of San Francisco.

(i) ''McAteer–Petris Act'' means Title 7.2 (commencing with Section 66000) of the Government Code.

(j) ''Public trust'' or ''trust'' means the public trust for commerce, or navigation and fisheries.

(k) ''Port'' means the City and County of San Francisco acting by and through the San Francisco Port Commission.

(*l*) ''San Francisco Bay'' means those areas defined in Section 66610 of the Government Code.

(m) ''San Francisco waterfront'' means those portions of the area transferred to the port pursuant to the Burton Act that also lie within the area defined in subdivisions (a) and (b) of Section 66610 of the Government Code.

(n) ''Seawall Lot 330'' means that parcel of property located in San Francisco identified on that certain map entitled SUR 790, and shown

on Page 318 of the City and County of San Francisco 100 Scale Ownership Maps, which is on file with the city's Bureau of Street Use and Mapping.

(o) ''Shoreline band jurisdiction'' means the jurisdiction, powers, and duties of BCDC pursuant to Title 7.2 (commencing with Section 66600) of the Government Code to regulate uses within the area defined in subdivision (b) of Section 66610 of the Government Code to ensure, in part, maximum feasible public access, as prescribed in Section 66632.4 of the Government Code.

(p) ''Special Area Plan'' means the San Francisco Waterfront Special Area Plan, dated July 20, 2000, adopted by BCDC, as amended from time to time.

(q) ''Street'' means those lands located within the South Beach/China Basin Planning area of the San Francisco waterfront at Seawall Lot 330, and also lying within Parcel A of those lands transferred to the City and County of San Francisco pursuant to the Burton Act, as recorded May 14, 1969, in Book C 169 at Pages 573 to 664, inclusive, in the San Francisco Recorder's office, as more particularly described as that portion of Main Street, located between Bryant Street and the Embarcadero, vacated per Ordinance 14-93 on January 11, 1993, on file with the San Francisco Bureau of Street Use and Mapping, in Book 10, Page 94. All streets and street lines described in the preceding sentence are in accordance with that certain map entitled SUR 790, and shown on Page 318 of the City and County of San Francisco 100 Scale Ownership Maps, on file with the City's Bureau of Street Use and Mapping.

(r) ''Waterfront Land Use Plan'' means the Waterfront Land Use Plan, including the Waterfront Design and Access Element, adopted by the port pursuant to Resolution No. 97–50, as amended from time to time.

SEC. 2. The Legislature finds and declares all of the following:

(a) In 1965, the Legislature adopted the McAteer–Petris Act to protect and enhance the San Francisco Bay and its natural resources. The McAteer–Petris Act grants BCDC regulatory authority over further filling in San Francisco Bay through exercise of its bay jurisdiction, and limits that activity to (1) water-oriented uses that meet specified criteria; (2) minor fill that improves shoreline appearance or public access; and (3) activities necessary for the health, safety and welfare of the public in the entire bay area. The McAteer-Petris Act also authorizes BCDC to require the provision of maximum feasible access to the bay consistent with the project over a 100-foot shoreline band through the exercise of its shoreline band jurisdiction.

(b) In 1969, pursuant to the Burton Act, the state conveyed by transfer agreement certain state tide and submerged lands to the Port. The lands are held by the Port in trust for purposes of commerce, navigation, and

fisheries, and are subject to the terms and conditions specified in the Burton Act and the public trust. During the three decades since passage of the Burton Act, issues have arisen concerning the application of the McAteer–Petris Act to the piers along the San Francisco waterfront. To address those issues, BCDC and the Port undertook two intensive and careful planning processes, which lasted over nine years.

(c) The first process culminated in 1997 with the adoption by the Port of the Waterfront Land Use Plan and with the adoption by the Board of Supervisors of the City and County of San Francisco and the Planning Commission of the City and County of conforming amendments to the City's General Plan and Planning Code.

(d) In July 2000, after the second five-year cooperative process involving the Port, BCDC, the Save San Francisco Bay Association, and numerous interested community groups and individuals, was completed, the Port adopted further amendments to the Waterfront Land Use Plan. BCDC also adopted amendments to the Special Area Plan which is incorporated into, and made a part of, the San Francisco Bay Plan, to create consistent plans for the area of the San Francisco waterfront between Pier 35 and China Basin. At the present time, the Waterfront Land Use Plan addresses specific McAteer–Petris Act issues relating to public access and the preservation and enhancement of open water as a bay resource in this area. The plan also defines public access opportunities on each pier in this area and calls for the removal of certain additional piers to enhance water views and create additional bay surface area.

(e) A major objective of the joint effort described in subdivisions (b), (c), and (d) is to establish a new criterion in the San Francisco Bay Plan that would permit fill on the San Francisco waterfront in an area where a Special Area Plan has been adopted by BCDC for uses that are consistent with the public trust and the Burton Act trust. The Special Area Plan for the area between Pier 35 and China Basin should provide for all of following:

(1) The nature and extent of maximum feasible public access for the piers including perimeter access, a history walk on most piers, and other significant access features on piers where appropriate.

(2) Two major public plazas, the Brannan Street Wharf adjacent to Pier 30-32 and another in the vicinity of Pier 27.

(3) A public planning process to lead to the creation of a third major public plaza in the Fisherman's Wharf area.

(4) The removal of certain piers to uncover additional bay surface.

(5) The creation and funding of a special fund within the Port to finance the removal of the selected piers and the construction and maintenance of those public plazas.

(6) A historic preservation mechanism to ensure preservation of important historic resources on the piers.

(7) The ability of the Port to repair, improve, or use the piers not designated for removal between Pier 35 and China Basin for any purpose consistent with the Burton Act, the public trust and the Special Area Plan.

(f) The San Francisco waterfront, which has been the subject of this planning process, provides benefits to the entire bay area, and serves as a unique destination for the region's public. These regionwide benefits include enjoyment of a unique, publicly owned waterfront that provides special maritime, navigational, recreational, cultural, and historical benefits that serve the bay area. Accordingly, the adoption by BCDC, and the ratification by the Legislature, of the Special Area Plan, as amended, is necessary to protect the health, safety, and welfare of the public in the entire bay area for purposes of subdivision (f) of Section 66632 of the Government Code.

SEC. 3. The Legislature also hereby finds and declares all of the following with respect to Seawall Lot 330 and the street:

(a) The lands comprising the street are tide and submerged lands that have been filled and reclaimed, and were reserved to the state solely for street purposes.

(b) The filled and reclaimed tide and submerged lands constituting the street have been filled and reclaimed for, and in connection with, a highly beneficial plan of improvement for harbor development.

(c) The street is not used, suitable, or necessary for navigation purposes and is not necessary, or used for street purposes.

(d) The street or any interests in the street that are to be sold by the city, and over which the Burton Act trust and the public trust will be terminated, constitute a relatively small portion of the granted tide and submerged lands.

(e) Section 3 of Article X of the California Constitution permits the sale to any city, county, city and county, municipal corporation, private person, partnership, or corporation of tidelands reserved to the state solely for street purposes, which tidelands the Legislature finds and declares are not used and not necessary for navigation purposes, subject to such conditions as the Legislature may impose to protect the public interest.

(f) The existence of the street limits the potential development of Seawall Lot 330. The proposed sale will be consistent with Section 3 of Article X of the California Constitution, if all of the following conditions are met:

(1) The consideration for the sale of the street, pursuant to Section 3 of Article X of the California Constitution, shall be the fair market value of those lands or interests in the lands.

(2) The street to be sold by the city and over which the public trust or the Burton Act trust, or both trusts, will be terminated has been filled and reclaimed, and the street consisting entirely of dry land lying above the present line of mean high tide is no longer needed or required for the purposes of the public trust or the Burton Act trust.

(3) The street to be sold by the city and over which the public trust or the Burton Act trust, or both trusts, will be terminated has been cut off from direct access to the waters of San Francisco Bay by past filling of intervening property for a major roadway (the Embarcadero), which has provided, and will continue to provide, lateral public access to the water.

(4) The street was reserved to the state for street purposes and is not used or necessary for navigation purposes. Therefore, in accordance with Section 3 of Article X of the California Constitution, that street can and should be conveyed into private ownership for uses consistent with, and in furtherance of, this act.

(5) The sale of the street shall occur only in conjunction with a simultaneous exchange of the state's sovereign title in Seawall Lot 330 pursuant to Chapter 310 of the Statutes of 1987, according to the terms and conditions required by the State Lands Commission, or other disposition of the state's sovereign title in Seawall Lot 330 approved by the State Lands Commission or the Legislature.

(g) It is therefore the intent of the Legislature, subject to the terms and conditions set forth in this act to authorize the city to dispose of the street for private use free from the public trust or the Burton Act trust.

SEC. 4. The Legislature further finds and declares that the following unique circumstances exist at Pier 30-32 on the San Francisco waterfront, and that therefore, this act sets no precedent for any other location or project in the state:

(a) The Pier 30-32 platform bayward of the Embarcadero consists of an obsolete, pile-supported pier structures that are physically no longer capable of serving most trust-related purposes without substantial modification and repair.

(b) San Francisco is the center of northern California's cruise activity. The need for a new cruise ship terminal has been recognized for over 40 years, most recently in a 1998 assessment by the Port that found that cruise industry experts considered the present terminal at Pier 35 on the San Francisco waterfront to be inferior to other cruise terminals in the United States. That assessment also concluded that the existing San Francisco passenger terminal at Pier 35 cannot accommodate modern cruise ships. Without a new passenger terminal, California stands to lose a significant portion of the cruise ship business it presently enjoys, which would also adversely affect the many maritime industries dependent on a healthy cruise industry.

(c) The Port's 1998 assessment evaluated alternative locations for a new cruise ship terminal and concluded that Pier 30-32 was the most viable site for a new cruise terminal in San Francisco because of dredging, site configuration, and development considerations.

(d) The Waterfront Land Use Plan and the Special Area Plan recognize that the development of Pier 30-32 and the surrounding area within the South Beach/China Basin subarea identified in the Waterfront Land Use Plan would further the public trust purposes of increasing maritime activities and expanding public use and enjoyment of the waterfront on trust lands at this location.

(e) The Port has solicited proposals and has chosen a developer for a mixed-use development at Pier 30-32, the primary purposes of which are to promote waterborne transportation at the port by constructing the James R. Herman International Cruise Terminal at Pier 30-32, and to further public use and enjoyment of the tidelands at this location by providing boat berths, public access, and substantial ground floor commercial public trust uses.

(f) In addition to being a destination for cruise ships, the planned improvements include berthing facilities for waterborne transit, such as water taxis and commercial excursion and recreational boats that will promote local waterborne transit and establish the proposed development at Pier 30-32 as a water-side destination for recreational boating.

(g) The Brannan Street Wharf will lie adjacent to Pier 30-32. Pursuant to the Special Area Plan implementation requirements, the approval and construction of the proposed development at Pier 30-32 requires that the construction of Phase I of the Brannan Street Wharf be completed no later than five years after the issuance of a certificate of occupancy for the major reuse of Pier 30-32, and that the entire Brannan Street Wharf be completed no later than 15 years after issuance of a certificate of occupancy for the major reuse of Pier 30-32, if grant funds or other funding are available, or 20 years if not. The Brannan Street Wharf will provide an essential recreational element to serve the public trust as provided in the Special Area Plan. Accordingly, it is desirable that the construction of the Brannan Street Wharf be accelerated.

(h) The Port is committed to the construction of the Brannan Street Wharf earlier than required under the Special Area Plan through investment of approximately fifteen million dollars ($15,000,000) for the removal of 175,000 square feet of pile-supported fill and development of public access improvements, to be funded primarily by revenue from port operations, including the development of Pier 30-32.

(i) The proposed development of a cruise ship terminal at Pier 30-32 will require a substantial capital investment to improve the piles and decking. The Port must conserve port revenue to support those maritime

uses and public improvements for which private investment is not economical. Therefore, the Port cannot directly fund all necessary capital improvements to construct new needed maritime facilities, including a new passenger terminal and associated improvements.

(j) Under applicable regulations, and due to the limited, seasonal (May through September) nature of the cruise ship operation, cruise ships will use the cruise terminal only approximately 65 to 100 days per year.

(k) The inclusion of public access structures, a lagoon, transient boat berthing, commercial public trust uses, together with a new passenger terminal, promotes the trust objectives of furthering maritime commerce and improving public access and use on the San Francisco waterfront.

(*l*) The inclusion of upper level general office space at Pier 30-32 is proposed because it provides a needed incentive for private investment. To the extent the office space is not occupied by trust tenants, it is not a trust use, notwithstanding its importance as a financial inducement.

SEC. 5. The Legislature, in the exercise of its retained power as trustee of the public trust, and in view of the unique circumstances existing at Pier 30-32 on the San Francisco waterfront and the considerable statewide public benefit and promotion of maritime transportation that will be brought about by the construction of a new passenger cruise ship terminal, improvements to berthing facilities for waterborne transit, a lagoon, improved public access and commercial public trust uses on this site, hereby authorizes the Port to approve a cruise ship terminal development on the San Francisco waterfront at Pier 30-32, which would include general office use and general retail use, if all of the following conditions are met:

(a) The development includes a modern two-berth cruise ship terminal.

(b) The development includes a public access component that meets the requirements of the Special Area Plan and the San Francisco Bay Plan as interpreted by BCDC and that also offers expanded bay views and public access.

(c) Prior to submitting a major permit application to BCDC for the cruise ship terminal development, the Port, after review by or on behalf of BCDC, approves the final design concept for the Brannan Street Wharf.

(d) Prior to the issuance of a BCDC permit for the cruise ship terminal development, the Port demonstrates, to the satisfaction of BCDC and the Attorney General's office, that it has irrevocably encumbered all of the funds deemed necessary for the completion of the Brannan Street Wharf and has placed the funds in a segregated account guaranteed to be available to be drawn upon for the construction of the Brannan Street Wharf, and the Port and BCDC enter into an enforceable agreement that

provides for the Port to fund, directly or through grant funding, or both, design, and construct the Brannan Street Wharf consistent with the following timetable:

(1) The Port shall complete preliminary engineering drawings for the Brannan Street Wharf and prepare and submit to BCDC a financing plan approved by the Port indicating funding sources and estimated construction costs at the time the construction of the cruise ship terminal development commences.

(2) The Port shall complete Phase 1, the northern portion of the Brannan Street Wharf (in the area of Pier 34), as described in the Special Area Plan contemporaneously with the construction of the cruise terminal development.

(3) The Port shall remove Pier 36 and complete the Brannan Street Wharf no later than five years after commencement of construction of the cruise ship terminal development.

(e) The amount of office space in the development does not exceed 300,000 leasable square feet, all of which shall be above the ground level. This office space shall also be designed to contribute to a development design that includes public spaces and promotes visual and public access. An additional 25,000 leasable square feet of space in the cruise ship terminal building may be used for general office use until the earlier of either of the following:

(1) Fourteen years from the first date of occupancy.

(2) When home berthing ships above 5,000 passenger berth capacity call for 15 days per year for two consecutive years.

(f) The development includes a marketing program designed to maximize the amount of general office space occupied by trust-related tenants over the life of the development.

(g) The cruise ship terminal as approved by BCDC complies with the requirements set forth in this subdivision. For purposes of this subdivision only, ''trust retail'' means visitor serving public trust retail and restaurant use. ''Nontrust retail'' means other retail, indoor public assembly, and theatre uses. The amount of trust retail leasable space shall be equal to or greater than the nontrust retail leasable space. The amount of trust and retail leasable space, nontrust retail leasable space, and visitor serving trust use converted from trust or nontrust retail approved by BCDC, as approved by BCDC, shall be at least 40 percent of the total amount of office leasable space.

SEC. 6. The Legislature finds and declares that the 2000 amendments of the San Francisco Bay Plan and the Special Area Plan by BCDC are authorized under subdivision (f) of Section 66632 of the Government Code as necessary to protect the health, safety, and welfare of the public in the entire Bay Area, and BCDC's actions with respect to those amendments are hereby ratified and confirmed.

SEC. 7. Notwithstanding the Special Area Plan and the Bay Plan requirement for findings of consistency with the public trust doctrine and the Burton Act, BCDC is authorized to approve the cruise ship terminal development trust as provided in this act. Except as provided in Section 14 of this act, nothing in this act is intended to limit the discretion of BCDC to approve or deny permits for the projects described in this act in a manner consistent with the McAteer-Petris Act, the Bay Plan, the Special Area Plan, and this act, or to limit the discretion of BCDC to enforce permits issued for the projects described in this act.

SEC. 8. (a) For the purpose of effectuating the sale of the street, including the conveyance of the street by the city, free of the public trust and the Burton Act trust, the State Lands Commission may convey to the city by patent all of the rights, title, and interest held by the state by virtue of its sovereign trust title to the street, including any public trust interest or Burton Act reservation or trust interest, not heretofore conveyed, subject to any reservations the State Lands Commission determines appropriate.

(b) In any case where the state, pursuant to this act, conveys filled tidelands and submerged lands transferred to the city pursuant to the Burton Act, 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 the Burton Act, or Section 6401 of the Public Resources Code, any such 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:

(1) 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.

(2) 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.

SEC. 9. The city may, pursuant to Section 3 of Article X of the California Constitution, sell the street to any private person, partnership, or corporation, with the approval of the State Lands Commission, if the city first finds that the sale is consistent with the legislative findings and declarations set forth in Section 3. That sale shall not be effective unless and until the State Lands Commission, at a regular open meeting with the proposed sale of the street as a properly scheduled agenda item, does or has done, all of the following:

(a) Finds, or has found, that the consideration for the sale of the street pursuant to Section 3 of Article X of the California Constitution shall be the fair market value of the street.

(b) Adopts, or has adopted, a resolution approving the sale that finds and declares that the street has been filled and reclaimed, is cut off from access to the waters of San Francisco Bay, and is no longer needed or required for the promotion of the public trust or the Burton Act trust, and that no substantial interference with the public trust or Burton Act trust uses and purposes will ensue by virtue of the sale. The resolution shall also declare that the sale is consistent with the findings and declarations in Section 3, and the sale is in the best interests of the state and city. Upon adoption of the resolution, or at a time that is specified in the resolution, the street shall thereupon be free from the public trust and the Burton Act trust.

(c) Finds, or has found, that the sale of the street shall occur only in conjunction with a simultaneous exchange of the state's sovereign title in Seawall Lot 330 pursuant to Chapter 310 of the Statutes of 1987, according to the terms and conditions required by the State Lands Commission, or other disposition of the state's sovereign title in Seawall Lot 330 approved by the State Lands Commission or the Legislature, and that the proceeds for that sale will be devoted to trust-related capital improvements by the Port.

SEC. 10. Sales made by the city pursuant to this act are hereby determined to be of statewide significance and importance and, therefore, any ordinance, charter provision, or other provision of local law inconsistent with this act is not applicable to those sales.

SEC. 11. Any agreement for the sale of, and trust termination over, the street pursuant to this act shall be conclusively presumed to be valid, unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of the agreement. Any such proceeding shall be commenced within 60 days after the recording of the agreement.

SEC. 12. The State Lands Commission and the city may modify any description and plat prepared and recorded pursuant to the Burton Act, as amended, and Section 11 of that certain agreement relating to the transfer of the Port of San Francisco from the state to the city and dated January 24, 1969, and to record the modified description and plat in the office of the recorder of the city.

SEC. 13. 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 regarding a street sale or exchange of land entered into pursuant to this act or pursuant to Chapter 310 of the Statutes of 1987 to confirm the validity of the agreement. Notwithstanding 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 this act, Chapter 310 of the Statutes of 1987, Sections 3 and 4 of Article X of the California Constitution, and any other law applicable to the validity of the agreement.

SEC. 14. The authorization contained in Section 5, and any lease, permit, development approval, or other entitlement for use, including any BCDC permit, for the cruise ship terminal development that is dependent upon that authorization is not affected by the failure of the Port to perform any obligation under the BCDC agreement referred to in subdivision (d) of Section 5, and that authorization and the lease, permit, development approval, or other entitlement for use shall remain in full force and effect. BCDC may enforce the agreement referred to in subdivision (d) of Section 5 by specific performance or by any other enforcement remedy in the McAteer–Petris Act, except for revocation of any BCDC permit issued for the cruise terminal development.

CHAPTER 490

An act to amend Section 18009.3 of, and to add Sections 18033 and 18033.1 to, the Health and Safety Code, relating to park trailers.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 18009.3 of the Health and Safety Code is amended to read:

18009.3. (a) ''Park trailer'' means a trailer designed for human habitation for recreational or seasonal use only, that meets all of the following requirements:

(1) It contains 400 square feet or less of gross floor area, excluding loft area space if that loft area space meets the requirements of subdivision (b) and Section 18033. It may not exceed 14 feet in width at the maximum horizontal projection.

(2) It is built upon a single chassis.

(3) It may only be transported upon the public highways with a permit issued pursuant to Section 35780 of the Vehicle Code.

(b) For purposes of this section and Section 18033, ''loft area'' means any area within a unit that is elevated 30 inches or more above the main floor area and designed to be occupied. In order for the floor of a loft area to be occupied and excluded from the calculation of gross floor area for

purposes of subdivision (a), the loft area shall meet all of the requirements of Section 18033. Loft areas not meeting the requirements of this subdivision and Section 18033 shall not be occupied and shall be posted with a permanent label conspicuously located within 24 inches of the opening of each noncomplying loft. The label language and design shall provide the following:

WARNING
This area is not designed to be occupied and shall be used only for storage.

Lettering on this label shall contrast with the label's background and shall be not less than one-quarter inch in height, except for the word "WARNING" which shall be not less than one-half inch in height.

(c) A park trailer hitch, when designed by the manufacturer to be removable, may be removed and stored beneath a park trailer.

(d) If any provision of this section or Section 18033 conflicts with ANSI Standard A119.5 Recreational Park Trailers as it is published at any time, the statutory provision shall prevail.

SEC. 2. Section 18033 is added to the Health and Safety Code, to read:

18033. Each loft area excluded from the gross floor area pursuant to Section 18009.3 shall comply with all of the following requirements:

(a) A loft ceiling shall be a minimum of 54 inches above the loft floor for not less than 50 percent of the total loft ceiling area, or 50 inches above the loft floor for not less than 70 percent of the total loft ceiling area. The ceiling height shall be measured from the highest point of the finished floor of the loft area to the finished ceiling.

(b) The floor of the loft area is designed to withstand at least 30 pounds per square foot live load.

(c) The combined floor area of all loft areas shall not exceed 50 percent of the total gross floor area of the unit.

(d) Each loft shall be accessed only by use of a stairway and not a ladder or any other means. The stairway shall be constructed as follows:

(1) The stairs shall have a maximum rise of nine inches and a minimum tread of seven and one-quarter inches. The riser shall be an open-type riser design. The riser height and the tread run shall be allowed a maximum variation of one-quarter inch between each step. The stairway width shall be a minimum of 22 inches as measured along the step tread.

(2) The stairs shall be capable of supporting 50 pounds per square foot.

(3) Each stairway serving a loft shall be provided with a handrail not less than 34 inches in height as measured horizontally from the nose of

the step tread. The stairway handrail must be designed to withstand a 20-pound load per lineal foot applied horizontally at right angles to the top rail. The handrail shall be continuous the full length of the stairs.

(4) The handgrip portion of the handrail shall not be less than one and one-quarter inches nor more than two inches in cross-sectional dimension, or the shape shall provide an equivalent gripping surface. The handgrip portion of the handrail shall have a smooth surface with no sharp corners. The handrail projection from a wall or other similar surface shall have a space of not less than one and one-half inches between the wall and the handrail. Handrails installed on the open side of stairways shall have intermediate rails or an ornamental pattern installed as specified in paragraph (1) of subdivision (e).

(e) Each loft area shall have guardrails located at open areas and at the open side of the stairway. The guardrail shall comply with all of the following:

(1) Guardrails shall have intermediate rails or an ornamental pattern so that a sphere four inches in diameter cannot pass through, except that triangular openings at the open side of a stairway may be of a size that a sphere six inches in diameter cannot pass through.

(2) Guardrails shall be capable of supporting a load of 20 pounds per lineal foot applied horizontally at right angles at the top of the rail.

(3) The guard rail shall be a minimum of 34 inches in height as measured from the finished floor covering of the loft area to the top of the rail.

(f) Each loft area shall have a minimum of two exits complying with ANSI Standard A119.5 Recreational Park Trailers, Chapter 3, one of which may be the stairway. Each alternate exit shall comply with both of the following:

(1) Lead directly to the exterior of the park trailer.

(2) The location of each alternate exit shall meet all requirements for access, operation, size markings, and identification as specified in ANSI Standard A119.5 Recreational Park Trailers, Chapter 3, for alternate exits.

(g) The loft area shall be provided with light and ventilation consistent with ANSI Standard A119.5 Recreational Park Trailers, Chapter 3. In addition to the smoke detector or detectors to serve the main floor, an additional smoke detector shall be installed in each loft area and shall comply with the requirements in ANSI Standard A119.5 Recreational Park Trailers, Chapter 3.

(h) The following electrical requirements shall be followed:

(1) At least one recessed light fixture shall be installed over the stairway. Each recessed light over a stairway shall be operated by a three-way switch with one switch located at the main floor and one switch located in the loft area. Both light switches shall be located

immediately adjacent to each stairway. Additional lighting in the loft area shall only be of the recessed type.

(2) Wiring methods and receptacle placement shall be installed per the requirements in ANSI Standard A119.5 Recreational Park Trailers, Chapter 1.

SEC. 3. Section 18033.1 is added to the Health and Safety Code, to read:

18033.1. (a) The Legislature finds and declares that certain park trailer units with lofts that do not comply with Section 18009.3, as amended in 2001, and Section 18033 were designed and manufactured for residential occupancy in the lofts, and were sold and occupied in this state prior to January 3, 2001. On or about January 3, 2001, the department issued an information bulletin informing local government building code enforcement agencies, park trailer manufacturers and dealerships, and other interested parties that, in fact, many of these park trailers did not comply with applicable standards with respect to the lofts and related areas and therefore were not recreational vehicles or park trailers, as defined by this part.

(b) (1) In order to ensure reasonable standards of public safety while avoiding undue hardship to purchasers of park trailers with lofts that are in substantial compliance with Section 18009.3, as amended in 2001, and Section 18033, park trailers with lofts shall be deemed to comply with those sections if there is compliance with all of the following requirements of this subdivision and subdivision (c):

(A) They were manufactured prior to January 3, 2001, and sold prior to June 3, 2001.

(B) The notices described in subdivision (c) are provided as specified in subdivision (c).

(2) For purposes of this subdivision, ''substantial compliance'' shall require being constructed and maintained in a manner consistent with Section 18009.3, as amended in 2001, and Section 18033, except for the following:

(A) Notwithstanding Section 18009.3, as amended in 2001, and Section 18033, ceilings of lofts shall be a minimum height of 50 inches above the loft floor for not less than 70 percent of the total loft ceiling area. One exit window shall be provided in all lofts used for human habitation, providing an unobstructed opening of at least 484 square inches, with a minimum dimension of 22 inches in any direction. The window shall be located on a wall or roof located opposite the access stairs to the loft area.

(B) Notwithstanding Section 18009.3, as amended in 2001, and Section 18033, stairs serving as access to or egress from lofts shall not be required to comply with the provisions for rise and run as described in paragraph (1) of subdivision (c) of Section 18009.3 if the stairs are

provided with a complying handrail as provided in paragraph (4) of subdivision (c) of Section 18009.3.

(c) For purposes of being deemed in compliance pursuant to this section, a park trailer with one or more lofts shall comply with the following paragraphs:

(1) Within 24 inches of the opening of each loft, a permanent label shall be posted conspicuously, which states, in letters not less than one-half inch in height and in a color contrasting with the sign's background and wall color, the following:

"NOTICE: THIS LOFT AREA AND THE STAIRS DO NOT COMPLY WITH CODES IN EFFECT ON JANUARY 1, 2002, AND MAY BE DIFFICULT TO EXIT FROM IN THE EVENT OF A FIRE."

(2) The manufacturer of each park trailer subject to this section shall, to the extent feasible, mail the purchaser of the park trailer a written notice entitled, in bold 16-point type, the following:

"WARNING: LOFT AREAS AND STAIRS IN YOUR PARK TRAILER DO NOT COMPLY WITH STANDARDS IN EFFECT ON OR AFTER JANUARY 1, 2002. EXTRA CARE MAY BE REQUIRED TO EXIT FROM A LOFT IN THE EVENT OF A FIRE."

This notice also shall set forth the provisions of this section and shall provide the name, address, and telephone number of a person to whom the owner may address questions.

(3) If the owner rents or otherwise provides for consideration the park trailer subject to this section, the owner shall provide a written notice to the occupant that provides, in bold 16-point type, the following:

"WARNING: LOFT AREAS AND STAIRS IN YOUR PARK TRAILER DO NOT COMPLY WITH STANDARDS IN EFFECT ON OR AFTER JANUARY 1, 2002. EXTRA CARE MAY BE REQUIRED TO EXIT FROM A LOFT IN THE EVENT OF A FIRE."

(d) If the lofts and stairs of any park trailer do not comply with the requirements of this section, Section 18009.3, as amended in 2001, and Section 18033, the park trailer shall be deemed not in substantial compliance with this section, the loft area may not be used for human

habitation but only for storage, and the loft area shall comply with the signage requirements prescribed by subdivision (b) of Section 18009.3.

CHAPTER 491

An act to add and repeal Section 33413.5 of the Health and Safety Code, relating to redevelopment.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 33413.5 is added to the Health and Safety Code, to read:

33413.5. (a) To satisfy the requirements of paragraphs (1) and (2) of subdivision (b) of Section 33413, the Redevelopment Agency for the City of Lancaster, until January 1, 2006, may purchase, or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of, long-term affordability covenants on mobilehome parks in which residents rent spaces and either rent or own the mobilehome occupying their spaces, that restrict the cost of renting or purchasing those units that either: (1) are units that are presently available at affordable housing cost to this same group of persons or families, but are units that the agency finds, based upon substantial evidence, after a public hearing, cannot reasonably be expected to remain affordable to this same group of persons or families; or (2) are not presently available at affordable housing cost to persons and families of low- or very low income households, as applicable.

(b) The long-term affordability covenants purchased or otherwise acquired on a mobilehome park shall be required to be maintained on the mobilehome park at affordable housing cost for occupancy by persons and families of low- and very low income for the longest feasible time, but for not less than 55 years.

The long-term affordability covenants purchased or otherwise acquired on the mobilehome parks shall also comply with the requirements applicable to long-term affordability covenants purchased or acquired pursuant to subparagraphs (B) and (C) of paragraph (2) of subdivision (b) of Section 33413.

(c) For the purposes of this section, affordable housing costs with respect to mobilehome parks shall be determined in the same manner as multifamily rental housing, except that the calculation of the affordable

housing cost to persons and families in mobilehome parks shall include the combined cost of all of the following:

(1) All costs for rental or purchase of the mobilehome park space, including homeowners association fees, special assessments, and required space maintenance.

(2) All costs for purchase or lease of the mobilehome coach, including principal and interest on any mortgage, property taxes, vehicle registration, and other fees.

(3) Insurance on the coach, not including its contents.

(4) Utilities.

The long-term affordability covenants with respect to a mobilehome park shall include a provision that space rents shall not be increased in a manner that results in the displacement of any park tenants residing within the mobilehome park at the time of the purchase, acquisition, regulation, or agreement resulting in the long-term affordability covenants.

(d) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 2. Section 1 of this act, which adds Section 33413.5 to the Health and Safety Code, shall become operative only if Assembly Bill 637 of the 2001–02 Regular Session is enacted and becomes effective on or before January 1, 2002.

SEC. 3. The Legislature finds and declares that, because of the unique circumstances applicable only to the City of Lancaster, 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.

CHAPTER 492

An act to add Section 13383.5 to the Water Code, relating to water.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 13383.5 is added to the Water Code, to read:

13383.5. (a) As used in this section, ''regulated municipalities and industries'' means the municipalities and industries required to obtain a storm water permit under Section 402(p) of the Clean Water Act (33 U.S.C. Sec. 1342(p)) and implementing regulations.

(b) This section only applies to regulated municipalities that were subject to a storm water permit on or before December 31, 2001, and to regulated industries that are subject to the General Permit for Storm Water Discharges Associated with Industrial Activities Excluding Construction Activities.

(c) Before January 1, 2003, the state board shall develop minimum monitoring requirements for each regulated municipality and minimum standard monitoring requirements for regulated industries. This program shall include, but is not limited to, all of the following:

(1) Standardized methods for collection of storm water samples.

(2) Standardized methods for analysis of storm water samples.

(3) A requirement that every sample analysis under this program be completed by a state certified laboratory or by the regulated municipality or industry in the field in accordance with the quality assurance and quality control protocols established pursuant to this section.

(4) A standardized reporting format.

(5) Standard sampling and analysis programs for quality assurance and quality control.

(6) Minimum detection limits.

(7) Annual reporting requirements for regulated municipalities and industries.

(8) For the purposes of determining constituents to be sampled for, sampling intervals, and sampling frequencies, to be included in a municipal storm water permit monitoring program, the regional board shall consider the following information, as the regional board determines to be applicable:

(A) Discharge characterization monitoring data.

(B) Water quality data collected through the permit monitoring program.

(C) Applicable water quality data collected, analyzed, and reported by federal, state, and local agencies, and other public and private entities.

(D) Any applicable listing under Section 303(d) of the Clean Water Act (33 U.S.C. Sec. 1313).

(E) Applicable water quality objectives and criteria established in accordance with the regional board basin plans, statewide plans, and federal regulations.

(F) Reports and studies regarding source contribution of pollutants in runoff not based on direct water quality measurements.

(d) The requirements prescribed pursuant to this section shall be included in all storm water permits for regulated municipalities and industries that are reissued following development of the requirements described in subdivision (c). Those permits shall include these provisions on or before July 1, 2008. In a year in which the Legislature appropriates sufficient funds for that purpose, the state board shall make

available to the public via the Internet a summary of the results obtained from storm water monitoring conducted in accordance with this section.

CHAPTER 493

An act to add Section 1748.95 to the Civil Code, to add Section 4002 to, and to add Article 6 (commencing with Section 22470) to Chapter 2 of Division 9 of the Financial Code, to amend Section 7480 of the Government Code, and to add Section 530.8 to the Penal Code, relating to identity theft.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 1748.95 is added to the Civil Code, to read:

1748.95. (a) (1) Upon the request of a person who has obtained a police report pursuant to Section 530.6 of the Penal Code, a credit card issuer shall provide to the person, or to a law enforcement officer specified by the person, copies of all application forms or application information containing the person's name, address, or other identifying information pertaining to the application filed with the credit card issuer by an unauthorized person in violation of Section 530.5 of the Penal Code.

(2) Before providing copies pursuant to paragraph (1), the credit card issuer shall inform the requesting person of the categories of identifying information that the unauthorized person used to complete the application and shall require the requesting person to provide identifying information in those categories and a copy of the police report.

(3) The credit card issuer shall provide copies of all forms and information required by this section, without charge, within 10 business days of receipt of the person's request and submission of the required copy of the police report and identifying information.

(b) (1) Before a credit card issuer provides copies to a law enforcement officer pursuant to paragraph (1) of subdivision (a), the credit card issuer may require the requesting person to provide them with a signed and dated statement by which the person does all of the following:

(A) Authorizes disclosure for a stated period.

(B) Specifies the name of the agency or department to which the disclosure is authorized.

(C) Identifies the type of records that the person authorizes to be disclosed.

(2) The credit card issuer shall include in the statement to be signed by the requesting person a notice that the person has the right at any time to revoke the authorization.

(c) As used in this section, ''law enforcement officer'' means a peace officer as defined by Section 830.1 of the Penal Code.

SEC. 2. Section 4002 is added to the Financial Code, to read:

4002. (a) (1) Upon the request of a person who has obtained a police report pursuant to Section 530.6 of the Penal Code, a supervised financial organization shall provide to the person, or to a law enforcement officer specified by the person, copies of all application forms or application information containing the person's name, address, or other identifying information pertaining to the application filed with the supervised financial organization by an unauthorized person in violation of Section 530.5 of the Penal Code.

(2) Before providing the person with copies pursuant to paragraph (1), the supervised financial organization shall inform the requesting person of the categories of identifying information that the unauthorized person used to complete the application, and shall require the requesting person to provide identifying information in those categories and a copy of the police report.

(3) The supervised financial organization shall provide copies of all forms and information required by this section, without charge, within 10 business days of receipt of the person's request and submission of the required copy of the police report and identifying information.

(b) (1) Before a supervised financial organization provides copies to a law enforcement officer pursuant to paragraph (1) of subdivision (a), the supervised financial organization may require the requesting person to provide them with a signed and dated statement by which the person does all of the following:

(A) Authorizes disclosure for a stated period.

(B) Specifies the name of the agency or department to which the disclosure is authorized.

(C) Identifies the type of records that the person authorizes to be disclosed.

(2) The supervised financial organization shall include in the statement to be signed by the requesting person a notice that the person has the right at any time to revoke the authorization.

(c) As used in this section, ''law enforcement officer'' means a peace officer as defined by Section 830.1 of the Penal Code.

SEC. 3. Article 6 (commencing with Section 22470) is added to Chapter 2 of Division 9 of the Financial Code, to read:

Article 6. Disclosure of Loan Applications

22470. (a) (1) Upon the request of a person who has obtained a police report pursuant to Section 530.6 of the Penal Code, a finance lender engaged in the business of making consumer loans shall provide to the person, or to a law enforcement officer specified by the person, copies of all application forms or application information containing the person's name, address, or other identifying information pertaining to the application filed with the finance lender by an unauthorized person in violation of Section 530.5 of the Penal Code.

(2) Before providing copies pursuant to paragraph (1), the finance lender shall inform the requesting person of the categories of identifying information that the unauthorized person used to complete the application, and shall require the requesting person to provide identifying information in those categories and a copy of the police report.

(3) The finance lender shall provide copies of all forms and information required by this section, without charge, within 10 business days of receipt of the person's request and submission of the required copy of the police report and identifying information.

(b) (1) Before a finance lender provides copies to a law enforcement officer pursuant to paragraph (1) of subdivision (a), the finance lender may require the requesting person to provide them with a signed and dated statement by which the person does all of the following:

(A) Authorizes disclosure for a stated period.

(B) Specifies the name of the agency or department to which the disclosure is authorized.

(C) Identifies the type of records that the person authorizes to be disclosed.

(2) The finance lender shall include in the statement to be signed by the requesting person a notice that the person has the right at any time to revoke the authorization.

(c) As used in this section, ''law enforcement officer'' means a peace officer as defined by Section 830.1 of the Penal Code.

SEC. 4. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or

district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this

subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(d) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(f) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(g) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(h) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(j) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, employees of the local child support agencies, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under

this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected within the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.

(k) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its

response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(*l*) The dissemination of financial information and records pursuant to an order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11. The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation. The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner. The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution. Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

Where a court has made an order to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (1) disclosing information in response to an order pursuant to this subdivision, or (2) complying with an order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the order.

(m) Disclosure by a financial institution to a peace officer, as defined in Section 830.1 of the Penal Code, pursuant to the following:

(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the Civil Code.

(2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the Financial Code.

(3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code, provided that any financial institution that is a finance lender has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 22470 of the Financial Code.

SEC. 4.5. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(d) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(f) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(g) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(h) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(j) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, employees of the local child support agencies, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected within the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.

(k) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(*l*) The dissemination of financial information and records pursuant to any of the following:

(1) Compliance by a financial institution with the requirements of Section 2892 of the Probate Code.

(2) Compliance by a financial institution with the requirements of Section 2893 of the Probate Code.

(3) An order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant

and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11.

(A) The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation.

(B) The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner.

(C) The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution.

(D) Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

(E) Where a court has made an order pursuant to this paragraph to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for any of the following:

(A) Disclosing information to a probate court pursuant to Sections 2892 and 2893.

(B) Disclosing information in response to a court order pursuant to paragraph (3).

(C) Complying with a court order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the court order.

(m) Disclosure by a financial institution to a peace officer, as defined in Section 830.1 of the Penal Code, pursuant to the following:

(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the Civil Code.

(2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code, provided that the financial institution has first complied with the

requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the Financial Code.

(3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code, provided that any financial institution that is a finance lender has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 22470 of the Financial Code.

SEC. 5. Section 530.8 is added to the Penal Code, to read:

530.8. If a person discovers that an application in his or her name for a loan, credit line or account, credit card, charge card, or utility service has been filed with any person by an unauthorized person, or that an account in his or her name has been opened with a bank, trust company, savings association, credit union, or utility by an unauthorized person, then, upon presenting to the person or entity with which the application was filed or the account was opened a copy of a police report prepared pursuant to Section 530.6 and identifying information in the categories of information that the unauthorized person used to complete the application or to open the account, the person shall be entitled to receive information related to the loan, credit line or account, credit card, charge card, utility service, or account, including a copy of the unauthorized person's application or application information for, and a record of transactions or charges associated with, the loan, credit line or account, credit card, charge card, utility service, or account. Upon request by the person in whose name the application was filed or in whose name the account was opened, the person or entity with which the application was filed shall inform him or her of the categories of identifying information that the unauthorized person used to complete the application or to open the account.

SEC. 6. Section 4.5 of this bill incorporates amendments to Section 7480 of the Government Code proposed by both this bill and AB 1286. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 7480 of the Government Code, and (3) this bill is enacted after AB 1286, in which case Section 4 of this bill shall not become operative.

CHAPTER 494

An act to amend, repeal, and add Section 7124.6 of the Business and Professions Code, relating to contractors.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 7124.6 of the Business and Professions Code is amended to read:

7124.6. (a) The registrar shall make available to members of the public the nature and disposition of all complaints on file against a licensee that have been referred for legal action.

(b) Any complaints resolved in favor of the contractor shall not be subject to disclosure under subdivision (a).

(c) This section shall become inoperative on July, 2002, and, as of January 1, 2003, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2003, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 7124.6 is added to the Business and Professions Code, to read:

7124.6. (a) The registrar shall make available to members of the public the date, nature, and status of all complaints on file against a licensee that do either of the following:

(1) Have been referred for accusation.

(2) Have been referred for investigation after a determination by board enforcement staff that a probable violation has occurred, and have been reviewed by a supervisor, and regard allegations that if proven would present a risk of harm to the public and would be appropriate for suspension or revocation of the contractor's license or criminal prosecution.

(b) The board shall create a disclaimer that shall accompany the disclosure of a complaint that shall state that the complaint is an allegation. The disclaimer may also contain any other information the board determines would be relevant to a person evaluating the complaint.

(c) A complaint resolved in favor of the contractor shall not be subject to disclosure.

(d) Except as described in subdivision (e), the registrar shall make available to members of the public the date, nature, and disposition of all legal actions.

(e) Disclosure of legal actions shall be limited as follows:

(1) Citations shall be disclosed from the date of issuance and for five years after the date of compliance, counting only the time the contractor's license is active.

(2) Accusations that result in suspension or stayed revocation of the contractor's license shall be disclosed from the date the accusation is filed and for seven years after the accusation has been settled, including the terms and conditions of probation, counting only the time the contractor's license is active.

(3) All revocations that are not stayed shall be disclosed indefinitely from the effective date of the revocation.

(f) Subdivisions (a), (b), and (c) shall become operative on July 1, 2002. Subdivisions (d) and (e) shall become operative on July 1, 2002, or as soon thereafter as administratively feasible, as determined by the registrar, but not later than January 2, 2003.

CHAPTER 495

An act to amend Sections 5800, 5810, 6710, 6714, 6735, 6735.3, 6735.4, 6795, 6799, 7200, 7215.6, 8710, 8741.1, 8801, 8805, 22251, 22254, 22255, and 22259 of, to add Sections 5801.1, 5811, and 5812 to, the Business and Professions Code, relating to professional boards, and making an appropriation therefor.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 5800 of the Business and Professions Code is amended to read:

5800. As used in this chapter:

(a) ''Certified interior designer'' means a person who prepares and submits nonstructural or nonseismic plans consistent with Sections 5805 and 5538 to local building departments that are of sufficient complexity so as to require the skills of a licensed contractor to implement them, and who engages in programming, planning, designing, and documenting the construction and installation of nonstructural or nonseismic elements, finishes and furnishings within the interior spaces of a building, and has demonstrated by means of education, experience and examination, the competency to protect and enhance the health, safety, and welfare of the public.

(b) An ''interior design organization'' means a nonprofit organization, exempt from taxation under Section 501(c)(3) of Title 26 of the United States Code, of certified interior designers whose governing board shall include representatives of the public, except that an organization that is not currently exempt under that section that submits an application to the Internal Revenue Service requesting an exemption under that section shall be eligible to be an interior design organization if it meets the requirements under that section within a reasonable period of time.

SEC. 2. Section 5801.1 is added to the Business and Professions Code, to read:

5801.1. The procedure for the issuance of a stamp by an interior design organization under Section 5801, including the examinations recognized and required by the organization, shall be subject to the occupational analyses and examination validation required by Section 139 every five to seven years.

SEC. 3. Section 5810 of the Business and Professions Code is amended to read:

5810. This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

This chapter shall remain in effect only until January 1, 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. Section 5811 is added to the Business and Professions Code, to read:

5811. An interior design organization issuing stamps under Section 5801 shall do the following:

(a) Report to the Joint Legislative Sunset Review Committee by September 1, 2002, on outreach efforts, examinations, finances, interactions of the organization, and materials and information.

(b) Have an audit conducted independently of their revenues and expenditures and provide the results of the audit to the Joint Legislative Sunset Review Committee within a reasonable time.

SEC. 5. Section 5812 is added to the Business and Professions Code, to read:

5812. It is an unfair business practice for any person to represent themselves as a ''certified interior designer'' unless they comply with the requirements of this chapter.

SEC. 6. Section 6710 of the Business and Professions Code is amended to read:

6710. (a) There is in the Department of Consumer Affairs a Board for Professional Engineers and Land Surveyors, which consists of 13 members.

(b) Any reference in any law or regulation to the Board of Registration for Professional Engineers and Land Surveyors is deemed to refer to the Board for Professional Engineers and Land Surveyors.

(c) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of the board shall

be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

SEC. 7. Section 6714 of the Business and Professions Code is amended to read:

6714. The board shall appoint an executive officer at a salary to be fixed and determined by the board with the approval of the Director of Finance.

This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7.2. Section 6735 of the Business and Professions Code is amended to read:

6735. (a) All civil (including structural and geotechnical) engineering plans, calculations, specifications, and reports (hereinafter referred to as ''documents'') shall be prepared by, or under the responsible charge of, a registered civil engineer and shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as ''preliminary,'' ''not for construction,'' ''for plan check only,'' or ''for review only.'' All civil engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the registrant, the date of signing and sealing or stamping, and the expiration date of the certificate or authority. All final civil engineering calculations and reports shall bear the signature and seal or stamp of the registrant, the date of signing and sealing or stamping, and the expiration date of the certificate or authority. If civil engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, date of signing and sealing or stamping, and expiration date of the certificate or authority shall appear on each sheet of the plans. If civil engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, the signature, seal or stamp, date of signing and sealing or stamping, and expiration date of the certificate or authority shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

(b) Notwithstanding subdivision (a), a registered civil engineer who signs civil engineering documents shall not be responsible for damage caused by subsequent changes to or uses of those documents, if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the registered engineer who originally signed the documents, provided that the engineering service rendered by the civil engineer who signed the documents was not also a proximate cause of the damage.

SEC. 7.4. Section 6735.3 of the Business and Professions Code is amended to read:

6735.3. (a) All electrical engineering plans, specifications, calculations, and reports (hereinafter referred to as ''documents'') prepared by, or under the responsible charge of, a registered electrical engineer shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as ''preliminary,'' ''not for construction,'' ''for plan check only,'' or ''for review only.'' All electrical engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the registrant, the date of signing and sealing or stamping, and the expiration date of the registration. All final electrical engineering calculations and reports shall bear the signature and seal or stamp of the registrant, the date of signing and sealing or stamping, and the expiration date of the registration. If electrical engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, date of signing and sealing or stamping, and expiration date of the registration shall appear on each sheet of the plans. If electrical engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, the signature, seal or stamp, date of signing and sealing or stamping, and expiration date of the registration shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

(b) Notwithstanding subdivision (a), a registered electrical engineer who signs electrical engineering documents shall not be responsible for damage caused by subsequent changes to or uses of those documents, if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the registered engineer who originally signed the documents, provided that the engineering service rendered by the electrical engineer who signed the documents was not also a proximate cause of the damage.

SEC. 7.6. Section 6735.4 of the Business and Professions Code is amended to read:

6735.4. (a) All mechanical engineering plans, specifications, calculations, and reports (hereinafter referred to as ''documents'') prepared by, or under the responsible charge of, a registered mechanical engineer shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as ''preliminary,'' ''not for construction,'' ''for plan check only,'' or ''for review only.'' All mechanical engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the registrant, the date of signing and sealing or stamping, and the expiration date of

the registration. All final mechanical engineering calculations and reports shall bear the signature and seal or stamp of the registrant, the date of signing and sealing or stamping, and the expiration date of the registration. If mechanical engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, date of signing and sealing or stamping, and expiration date of the certificate of registration shall appear on each sheet of the plans. If mechanical engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, the signature, seal or stamp, date of signing and sealing or stamping, and expiration date of the registration shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

(b) Notwithstanding subdivision (a), a registered mechanical engineer who signs mechanical engineering documents shall not be responsible for damage caused by subsequent changes to or uses of those documents, if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the registered engineer who originally signed the documents, provided that the engineering service rendered by the mechanical engineer who signed the documents was not also a proximate cause of the damage.

SEC. 8. Section 6795 of the Business and Professions Code is amended to read:

6795. Certificates of registration as a professional engineer, and certificates of authority, shall be valid for a period of two years from the assigned date of renewal. Biennial renewals shall be staggered on a monthly basis. To renew an unexpired certificate, the certificate holder shall, on or before the date of expiration indicated on the renewal receipt, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this chapter.

SEC. 9. Section 6799 of the Business and Professions Code is amended to read:

6799. 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 professional engineer and each application for authority level designation at not more than four hundred dollars ($400), and for each application for certification as an engineer-in-training at not more than one hundred dollars ($100).

(b) The temporary registration fee for a professional engineer at not more than 25 percent of the application fee in effect on the date of application.

(c) The renewal fee for each branch of professional engineering in which registration is held, and the renewal fee for each authority level

designation held, at no more than the professional engineer application fee currently in effect.

(d) The fee for a retired license at not more than 50 percent of the professional engineer application fee in effect on the date of application.

(e) The delinquency fee at not more than 50 percent of the renewal fee in effect on the date of reinstatement.

(f) The board shall establish by regulation an appeal fee for examination. The regulation shall include provisions for an applicant to be reimbursed the appeal fee if the appeal results in passage of examination. The fee charged shall be no more than the costs incurred by the board.

(g) All other document fees are to be set by the board by rule.

Applicants wishing to be examined in more than one branch of engineering shall be required to pay the additional fee for each examination after the first.

SEC. 10. Section 7200 of the Business and Professions Code is amended to read:

7200. (a) There is in the Department of Consumer Affairs a State Board of Guide Dogs for the Blind in whom enforcement of this chapter is vested. The board shall consist of seven members appointed by the Governor. One member shall be the Director of Rehabilitation or his or her designated representative. The remaining members shall be persons who have shown a particular interest in dealing with the problems of the blind, and at least two of them shall be blind persons who use guide dogs.

(b) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 11. 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. The board and its representative are not parties to any dispute described in this section.

(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 that 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. By voluntarily agreeing to having a dispute resolved by the arbitration panel and subject to its procedures, each party to the dispute shall waive any right for subsequent judicial review.

(e) A licensed guide dog school that 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 that 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, 2008, and as of January 1, 2009, is repealed, unless a later enacted statute, which is enacted before January 1, 2009, deletes or extends that date.

SEC. 12. Section 8710 of the Business and Professions Code is amended to read:

8710. (a) The Board for Professional Engineers and Land Surveyors is vested with power to administer the provisions and requirements of this chapter, and may make and enforce rules and regulations that are reasonably necessary to carry out its provisions.

(b) The board may adopt rules and regulations of professional conduct that are not inconsistent with state and federal law. The rules and regulations may include definitions of incompetence and negligence. Every person who holds a license or certificate issued by the board pursuant to this chapter, or a license or certificate issued to a civil engineer pursuant to Chapter 7 (commencing with Section 6700), shall be governed by these rules and regulations.

(c) 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. The repeal of this section shall render the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of this board shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

SEC. 13. Section 8741.1 of the Business and Professions Code is amended to read:

8741.1. The second division of the examination for licensure as a land surveyor shall include an examination that incorporates a national

examination for land surveying 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 the provisions of this chapter and the board's rules and regulations regulating the practice of professional land surveying in this state. The board shall prepare and distribute to applicants for the second division of the examination a plain language pamphlet describing the provisions of this chapter and the board's rules and regulations regulating the practice of land surveying in the state.

The board shall use the national examination on or before June 1, 2003. In the meantime, the board may continue to provide the current state-only second division examination and administer the test on the provisions of this chapter and board rules as a separate part of the second division examination for licensure as a land surveyor.

SEC. 14. Section 8801 of the Business and Professions Code is amended to read:

8801. Licenses issued under this chapter expire every two years, if not renewed. Biennial renewals shall be staggered on a quarterly basis. To renew an unexpired license the licenseholder shall on or before the date of expiration indicated on the renewal receipt, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this chapter.

SEC. 15. Section 8805 of the Business and Professions Code is amended to read:

8805. 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 licensure as a land surveyor at not more than four hundred dollars ($400), and for each application for certification as a land surveyor-in-training (LSIT) at not more than one hundred dollars ($100).

(b) The temporary registration fee for a land surveyor at not more than 25 percent of the application fee in effect on the date of application.

(c) The renewal fee for a land surveyor at not more than the application fee.

(d) The fee for a retired license at not more than 50 percent of the professional land surveyor application fee in effect on the date of application.

(e) The delinquency fee at not more than 50 percent of the renewal fee in effect on the date of reinstatement.

(f) The board shall establish by regulation an appeal fee for examination. The regulation shall include provisions for an applicant to be reimbursed the appeal fee if the appeal results in passage of examination. The fee shall be no more than the costs incurred by the board.

(g) All other document fees are to be set by the board by rule.

SEC. 16. Section 22251 of the Business and Professions Code is amended to read:

22251. For the purposes of this chapter, the following words have the following meanings:

(a) (1) Except as otherwise provided in paragraph (2), ''tax preparer'' includes:

(A) A person who, for a fee or for other consideration, assists with or prepares tax returns for another person or who assumes final responsibility for completed work on a return on which preliminary work has been done by another person, or who holds himself or herself out as offering those services. A person engaged in that activity shall be deemed to be a separate person for the purposes of this chapter, irrespective of affiliation with, or employment by, another tax preparer.

(B) A corporation, partnership, association, or other entity that has associated with it persons not exempted under Section 22258, which persons shall have as part of their responsibilities the preparation of data and ultimate signatory authority on tax returns or that holds itself out as offering those services or having that authority.

(2) Notwithstanding paragraph (1), ''tax preparer'' does not include an employee who, as part of the regular clerical duties of his or her employment, prepares his or her employer's income, sales, or payroll tax returns.

(b) ''Tax return'' means a return, declaration, statement, refund claim, or other document required to be made or filed in connection with state or federal income taxes or state bank and corporation franchise taxes.

(c) An ''approved curriculum provider,'' for purposes of basic instruction as described in subdivision (a) of Section 22255, and continuing education as described in subdivision (b) of Section 22255, is one who has been approved by the council as defined in subdivision (d), or by the Bureau for Private Postsecondary and Vocational Education under Chapter 7 (commencing with Section 94700) of Part 59 of Division 10 of the Education Code. A curriculum provider who is approved by the tax education council is exempt from Chapter 7 (commencing with Section 94700) of Part 59 of Division 10 of the Education Code.

(d) ''Council'' means the California Tax Education Council which is a single organization made up of not more than one representative from each professional society, association, or other entity operating as a California nonprofit corporation which chooses to participate in the council and which represents tax preparers, enrolled agents, attorneys, or certified public accountants with a membership of at least 200 for the last three years, and not more than one representative from each

for-profit tax preparation corporation which chooses to participate in the council and which has at least 200 employees and has been operating in California for the last three years. The council shall establish a process by which two individuals who are tax preparers, pursuant to Section 22255, are appointed to the council with full voting privileges, to serve terms as determined by the council, and with initial terms to be served on a staggered basis, providing that a person exempt from the requirements of this title pursuant to Section 22258 shall not be eligible for appointment, other than an employee of an individual in an exempt category.

SEC. 17. Section 22254 of the Business and Professions Code is amended to read:

22254. A provider of tax preparer education for tax preparers shall meet standards and procedures as approved by the council. The council shall either approve or decline to approve providers of tax preparer education within 120 days of receiving a request for approval. If approval is not declined within 120 days, the provider shall be deemed approved. A listing of those providers approved by the council shall be made available to tax preparers upon request.

SEC. 18. Section 22255 of the Business and Professions Code is amended to read:

22255. (a) The council shall issue a ''certificate of completion'' to the tax preparer when the tax preparer demonstrates that he or she has (1) completed not less than 60 hours of instruction in basic personal income tax law, theory, and practice by an approved curriculum provider within the previous 18 months; and (2) provides evidence of compliance with the bonding requirement of Section 22250, including the name of the surety company, the bond number, and the bond expiration date. Of the required 60 hours, 45 hours shall be concerned with federal tax curriculum and 15 hours shall be concerned with state tax curriculum.

(b) A tax preparer shall complete on an annual basis not less than 20 hours of continuing education, including 12 hours in federal taxation, four hours in California taxation and an additional four hours in either federal or California taxation from an approved curriculum provider. The council shall issue annually a ''statement of compliance'' when the tax preparer demonstrates that he or she has (1) completed the required 20 hours of continuing education, and (2) provides evidence of compliance with the bonding requirement of Section 22250, including the name of the surety company, the bond number, and the bond expiration date.

(c) An individual who possesses a minimum of two recent years experience in the preparation of personal income tax returns may petition the council to review the experience and determine if it is the equivalent of the required qualifying education. The council may

provide that individual with a ''certificate of completion'' if it is determined that the experience is the equivalent of the required hours. Tax preparation performed in situations that violate this chapter, by an individual who is neither registered nor exempted, may not be used toward the qualifying experience needed for registration as a tax preparer.

SEC. 19. Section 22259 of the Business and Professions Code is amended to read:

22259. This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

This chapter shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends that date on which it becomes inoperative and is repealed.

SEC. 20. 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.

CHAPTER 496

An act to amend Section 21455.5 of, and to add Section 21455.7 to, the Vehicle Code, relating to traffic devices.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 21455.5 of the Vehicle Code is amended to read:

21455.5. (a) The limit line, the intersection, or other places designated in Section 21455 where a driver is required to stop may be equipped with an automated enforcement system if the system meets both of the following requirements: (1) the system is identified by signs, clearly indicating the system's presence, visible to traffic approaching from all directions, or if signs are posted at all major entrances to the city, including, at a minimum, freeways, bridges, and state highway routes,

and (2) the system is located at an intersection that meets the criteria specified in Section 21455.7.

Any city utilizing an automated traffic enforcement system at intersections shall, prior to issuing citations, commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program.

Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system.

(b) (1) Notwithstanding Section 6253 of the Government Code, or any other provision of law, photographic records made by an automated enforcement system shall be confidential, and shall be made available only to governmental agencies and law enforcement agencies for the purposes of this article.

(2) For purposes of this article only, any confidential information obtained from the Department of Motor Vehicles for the administration or enforcement of this article shall be held confidential, and may not be used for any other purpose.

(c) Notwithstanding subdivision (b), the registered owner or any individual identified by the registered owner as the driver of the vehicle at the time of the alleged violation shall be permitted to review the photographic evidence of the alleged violation.

SEC. 2. Section 21455.7 is added to the Vehicle Code, to read:

21455.7. At each intersection at which there is an automated enforcement system in operation, the minimum yellow light change interval shall be established in accordance with the Traffic Manual of the Department of Transportation.

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.

CHAPTER 497

An act to amend Section 35555 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2001. Filed with
Secretary of State October 4, 2001.]

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

SECTION 1. Section 35555 of the Vehicle Code is amended to read:

35555. (a) During the period commencing September 15 of each year and ending March 15 of the following year, the weight limitations of Section 35551 do not apply to any cotton module mover or any truck tractor pulling a semitrailer that is a cotton module mover, when operated as follows:

(1) Laterally across a state highway at grade of the state highway.

(2) Upon any county highway within the Counties of Butte, Colusa, Fresno, Glenn, Imperial, Kern, Kings, Madera, Merced, Riverside, Sacramento, San Benito, San Bernardino, San Joaquin, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba, except as prohibited or limited on county highways or portions thereof by resolution of the county board of supervisors having jurisdiction.

(b) A cotton module mover may be operated upon a state highway within the counties and during the period set forth in subdivision (a) if all of the following are met:

(1) The operator is in possession of a driver's license of the class required for operation of the mover.

(2) The mover is operated in compliance with Sections 24002 and 24012; Article 1 (commencing with Section 24250) of, Article 3 (commencing with Section 24600) of, Article 4 (commencing with Section 24800) of, Article 5 (commencing with Section 24950) of, Article 6 (commencing with 25100) of, Article 9 (commencing with 25350) of, Article 11 (commencing with 25450) of, Chapter 2 of Division 12; and Article 2 (commencing with 26450) and Article 3 (commencing with 26502) of Chapter 3 of Division 12.

(3) The mover does not exceed the maximum allowable gross axle weight for tandem axles set forth in Section 35551 by more than 6,000 pounds.

(4) The operator of a mover that exceeds the maximum allowable gross axle weight for tandem axle vehicles as set forth in Section 35551 shall possess a commercial driver's license as defined in subdivision (a) of Section 15210.

(c) This section does not apply to those highways designated by the United States Department of Transportation as national network routes.

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.

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

In order that the provisions of this act, allowing the operation of cotton module movers upon state highways, may apply during the 2001 fall harvest season, it is essential that this act take effect immediately.

CHAPTER 498

An act to amend Sections 5412 and 5413 of the Health and Safety Code, and to amend Section 13271 of, and to add Section 13193 to, the Water Code, relating to water.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

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

(a) The protection of our state's water quality is a top priority in order to ensure the health of all the state's citizens, the protection of species and valuable ecosystems, and the continued and growing success of our state's coastal economy.

(b) Sanitary sewer system overflows, in which overflowing sewer pipes can result in raw sewage reaching the waters of the state, may impact aquatic life, human health, and lead to beach closures due to high bacteria counts caused by those overflows, adversely affecting the state's coastal tourism economy, which contributes over $10 billion annually to the state's economy.

(c) Existing reporting on the volumes and causes of overflows varies in content and reporting format, hampering effective regional and statewide use of the collected data.

(d) A comprehensive database, coupled with uniform reporting standards throughout the state, should be developed in order to assist local, regional, and state agencies charged with public health and water quality protection in preventing and minimizing these overflows in a cost-effective manner.

(e) Information on sanitary sewer system overflows should be made available to the general public so that informed decisions can be made about needed infrastructure improvements.

SEC. 2. Section 5412 of the Health and Safety Code is amended to read:

5412. Whenever the state department or any local health officer finds that a contamination exists, the state department or officer shall order the contamination abated, as provided in this chapter, and, commencing July 1 of a year in which the Legislature has appropriated sufficient funds for this purpose, shall submit any report required pursuant to subdivision (d) of Section 13193 of the Water Code.

SEC. 3. Section 5413 of the Health and Safety Code is amended to read:

5413. Whenever the state department finds that a pollution or nuisance does, in fact, exist, that condition shall be immediately referred by the state department to the proper regional board for action, together with any recommendations for correction, and, commencing July 1 of a year in which the Legislature has appropriated sufficient funds for this purpose, the state department shall submit any report required pursuant to subdivision (d) of Section 13193 of the Water Code. Upon request of a regional board, the state department shall inspect and report to the board on any technical factors involved in any condition of pollution or nuisance.

SEC. 4. Section 13193 is added to the Water Code, to read:

13193. (a) As used in this section, the following terms have the following meanings:

(1) ''Collection system owner or operator'' means the public or private entity having legal authority over the operation and maintenance of, or capital improvements to, the sewer collection system.

(2) ''GIS'' means Geographic Information System.

(b) On or before January 1 of a year in which the Legislature has appropriated sufficient funds for this purpose, the state board, in consultation with representatives of cities, counties, cities and counties, special districts, public interest groups, the State Department of Health Services, and the regional boards shall develop a uniform overflow event report form to be used for reporting of sanitary sewer system overflows as required in subdivision (c). This event report form shall include, but not be limited to, all of the following:

(1) The cause of the overflow. The cause shall be specifically identified, unless there is an ongoing investigation, in which case it shall be identified immediately after completion of the investigation. The cause shall be identified, at a minimum, as blockage, infrastructure failure, pump station failure, significant wet weather event, natural disaster, or other cause, which shall be specifically identified. If the

cause is identified as a blockage, the type of blockage shall be identified, at a minimum, as roots, grease, debris, vandalism, or multiple causes of which each should be identified. If the cause is identified as infrastructure, it shall be determined, at a minimum, whether the infrastructure failure was due to leaks, damage to, or breakage of, collection system piping or insufficient capacity. If the cause is identified as a significant wet weather event or natural disaster, the report shall describe both the event and how it resulted in the overflow. If the precise cause cannot be identified after investigation, the report shall include a narrative explanation describing the investigation conducted and providing the information known about the possible causes of the overflow.

(2) An estimate of the volume of the overflow event.

(3) Location of the overflow event. Sufficient information shall be provided to determine location for purposes of GIS mapping, such as specific street address or the latitude and longitude of the event.

(4) Date, time, and duration of the overflow event.

(5) Whether or not the overflow reached or may have reached waters of the state.

(6) Whether or not a beach closure occurred or may have occurred as a result of the overflow.

(7) The response and corrective action taken.

(8) Whether or not there is an ongoing investigation, the reasons for it and expected date of completion.

(9) The name, address, and telephone number of the reporting collection system owner or operator and a specific contact name.

(c) Commencing on July 1 of a year in which the Legislature has appropriated sufficient funds for this purpose, in the event of a spill or overflow from a sanitary sewer system that is subject to the notification requirements set forth in Section 13271, the applicable collection system owner or operator, in addition to immediate reporting duties pursuant to Section 13271, shall submit to the appropriate regional board, within 30 days of the date of becoming aware of the overflow event, a report using the form described in subdivision (b). The report shall be filed electronically, if possible, or by fax or mail if electronic submission is not possible.

(d) (1) Commencing on July 1 of a year in which the Legislature has appropriated sufficient funds for this purpose, in the event of a spill or overflow from a sanitary sewer system that is not subject to the reporting requirements set forth in Section 13271 that is either found by the State Department of Health Services or any local health officer to result in contamination pursuant to Section 5412 of the Health and Safety Code, or is found by the State Department of Health Services to result in pollution or nuisance pursuant to Section 5413 of the Health and Safety

Code, the agency making the determination shall submit to the appropriate regional board, within 30 days of making the determination, a report that shall include, at a minimum, the following information:

(A) Date, time, and approximate duration of the overflow event.

(B) An estimate of the volume of the overflow event.

(C) Location of the overflow event.

(D) A description of the response or corrective action taken by the agency making the determination.

(E) The name, address, and telephone number of the reporting collection system owner or operator, and a specific contact name.

(2) The report shall be filed electronically, if possible, or by fax or mail if electronic submission is not possible.

(e) Before January 1 of a year in which the Legislature has appropriated sufficient funds for this purpose, the state board, in consultation with representatives of cities, counties, cities and counties, and special districts, public interest groups, the State Department of Health Services, and regional boards, shall develop and maintain a sanitary sewer system overflow database that, at a minimum, contains the parameters described in subdivisions (b) and (d).

(f) Commencing on July 1 of a year in which the Legislature has appropriated sufficient funds for this purpose, each regional board shall coordinate with collection system owners or operators, the State Department of Health Services, and local health officers to compile the reports submitted pursuant to subdivisions (c) and (d). Each regional board shall report that information to the state board on a quarterly basis, to be included in the sanitary sewer system overflow database.

(g) The state board shall make available to the public, by Internet and other cost-effective means, as determined by the state board, information that is generated pursuant to this section. In a year in which the Legislature has appropriated sufficient funds for the purposes described in this subdivision, the state board shall prepare a summary report of the information collected in the sanitary sewer system overflow database, and make it available to the general public through the Internet and other cost-effective means, as determined by the state board. To the extent resources and the data allow, this report shall include GIS maps compiling coastal overflow events.

SEC. 5. Section 13271 of the Water Code is amended to read:

13271. (a) (1) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup

or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state toxic disaster contingency plan adopted pursuant to Article 3.7 (commencing with Section 8574.16) of Chapter 7 of Division 1 of Title 2 of the Government Code.

(2) The Office of Emergency Services shall immediately notify the appropriate regional board and the local health officer and administrator of environmental health of the discharge. The regional board shall notify the state board as appropriate.

(3) Upon receiving notification of a discharge pursuant to paragraph (2), the local health officer and administrator of environmental health shall immediately determine whether notification of the public is required to safeguard public health and safety. If so, the local health officer and administrator of environmental health shall immediately notify the public of the discharge by posting notices or other appropriate means. The notification shall describe measures to be taken by the public to protect the public health.

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.

(c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not more than twenty thousand dollars ($20,000) or imprisonment for not more than one year, or both. Except where a discharge to the waters of this state would have occurred but for cleanup or emergency response by a public agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state.

(d) Notification received pursuant to this section or information obtained by use of that notification shall not be used against any person providing the notification in any criminal case, except in a prosecution for perjury or giving a false statement.

(e) For substances listed as hazardous wastes or hazardous material pursuant to Section 25140 of the Health and Safety Code, the state board, in consultation with the Department of Toxic Substances Control, shall by regulation establish reportable quantities for purposes of this section. The regulations shall be based on what quantities should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations need not set reportable quantities on all listed substances at the same time. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division, and shall not supersede or affect in any way the list, criteria, and guidelines for the identification of hazardous wastes and extremely hazardous wastes adopted by the Department of Toxic Substances

Control pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The regulations of the Environmental Protection Agency for reportable quantities of hazardous substances for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) shall be in effect for purposes of the enforcement of this section until the time that the regulations required by this subdivision are adopted.

(f) (1) The state board shall adopt regulations establishing reportable quantities of sewage for purposes of this section. The regulations shall be based on the quantities that should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division. For purposes of this section, ''sewage'' means the effluent of a municipal wastewater treatment plant or a private utility wastewater treatment plant, as those terms are defined in Section 13625, except that sewage does not include recycled water, as defined in subdivisions (c) and (d) of Section 13529.2.

(2) A collection system owner or operator, as defined in paragraph (1) of subdivision (a) of Section 13193, in addition to the reporting requirements set forth in this section, shall submit a report pursuant to subdivision (c) of Section 13193.

(g) Except as otherwise provided in this section and Section 8589.7 of the Government Code, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency. When notifying the Office of Emergency Services, the person shall include all of the notification information required in the permit.

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.

CHAPTER 499

An act to amend Sections 17207 and 17405 of the Financial Code, relating to escrow agents.

[Approved by Governor October 4, 2001. Filed with
Secretary of State October 4, 2001.]

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

SECTION 1. Section 17207 of the Financial Code, as amended by Section 38 of Chapter 17 of the Statutes of 1997, is amended to read:

17207. The commissioner shall charge and collect the following fees and assessments:

(a) For filing an application for an escrow agent's license, six hundred twenty-five dollars ($625) for the first office or location and four hundred twenty-five dollars ($425) for each additional office or location.

(b) For filing an application for a duplicate of an escrow agent's license lost, stolen, or destroyed, or for replacement, upon a satisfactory showing of the loss, theft, destruction, or surrender of certificate for replacement, two dollars ($2).

(c) For investigation services in connection with each application, one hundred dollars ($100), and for investigation services in connection with each additional office application, one hundred dollars ($100).

(d) For holding a hearing in connection with the application, as set forth under Section 17209.2, the actual costs experienced in each particular instance.

(e) (1) Each escrow agent shall pay to the commissioner for the support of this division for the ensuing year an annual license fee not to exceed two thousand eight hundred dollars ($2,800) for each office or location.

(2) On or before May 30 in each year, the commissioner shall notify each escrow agent by mail of the amount of the annual license fee levied against it, and that the payment of the invoice is payable by the escrow agent within 30 days after receipt of notification by the commissioner.

(3) If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the annual license fee, of 10 percent of the fee for each month or part of a month that the payment is delayed or withheld.

(4) If an escrow agent fails to pay the amount due on or before the June 30 following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

(5) If, after an order is made pursuant to paragraph (4), a request for a hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a company shall not conduct business pursuant to this division, except as may be permitted by order of the commissioner. However, the revocation,

suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

(f) Fifty dollars ($50) for investigation services in connection with each application for qualification of any person under Section 17200.8, other than investigation services under subdivision (c) of this section.

(g) A fee not to exceed twenty-five dollars ($25) for the filing of a notice or report required by rules adopted pursuant to subdivision (a) or Section 17203.1.

(h) (1) If costs and expenses associated with the enforcement of this division, including overhead, are or will be incurred by the commissioner during the year for which the annual license fee is levied, and that will or could result in the commissioner's incurring of costs and expenses, including overhead, in excess of the costs and expenses, including overhead, budgeted for expenditure for the year in which the annual license fee is levied, then the commissioner may levy a special assessment on each escrow agent for each office or location in an amount estimated to pay for the actual costs and expenses associated with the enforcement of this division, including overhead, in an amount not to exceed five hundred dollars ($500) for each office or location. The commissioner shall notify each escrow agent by mail of the amount of the special assessment levied against it, and that payment of the special assessment is payable by the escrow agent within 30 days of receipt of notification by the commissioner. The funds received from the special assessment shall be deposited into the State Corporations Fund and shall be used only for the purposes for which the special assessment is made.

(2) If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the special assessment, of 10 percent of the special assessment for each month or part of a month that the payment is delayed or withheld. If an escrow agent fails to pay the special assessment on or before 30 days following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company. If an order is made under this subdivision, the provisions of paragraph (5) of subdivision (e) of this section shall apply.

(3) If the amount collected pursuant to this subdivision exceeds the actual costs and expenses, including overhead, incurred in the administration and enforcement of this division and any deficit incurred, the excess shall be credited to each escrow agent on a pro rata basis.

(i) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 2. Section 17207 of the Financial Code, as added by Section 1.5 of Chapter 670 of the Statutes of 1996, is amended to read:

17207. The commissioner shall charge and collect the following fees and assessments:

(a) For filing an application for an escrow agent's license, six hundred twenty-five dollars ($625) for the first office or location and four hundred twenty-five dollars ($425) for each additional office or location.

(b) For filing an application for a duplicate of an escrow agent's license lost, stolen, or destroyed, or for replacement, upon a satisfactory showing of the loss, theft, destruction, or surrender of certificate for replacement, two dollars ($2).

(c) For investigation services in connection with each application, one hundred dollars ($100), and for investigation services in connection with each additional office application, one hundred dollars ($100).

(d) For holding a hearing in connection with the application, as set forth under Section 17209.2, the actual costs experienced in each particular instance.

(e) (1) Each escrow agent shall pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of this division, as estimated by the commissioner for the ensuing year, and of any deficit actually incurred or anticipated in the administration of this division in the year in which the assessment is made. Commencing with the assessment for fiscal year 2006–07, the assessment shall not increase by more than 25 percent over the amount assessed in the prior year. The pro rata share shall be the proportion which a licensee's gross income from escrow operations bears to the aggregate gross income from escrow operations of all licensees as compiled by the commissioner. The pro rata share shall not include the costs of any examinations provided for in Section 17405.1, unless they cannot be collected from the company examined. If the pro rata assessment collected pursuant to this paragraph exceeds the actual costs and expenses incurred in the administration of this division and any deficit incurred, the excess shall be credited to each escrow agent on a pro rata basis.

(2) On or before May 30 in each year, the commissioner shall notify each escrow agent by mail of the amount assessed and levied against it, and that the payment of any invoice for assessments of the commissioner is payable by the escrow agent in three installments with the first installment payable within 20 days after receipt of notification by the commissioner and the second and third installments payable within 20 days of August 31 and November 30, respectively, in each year. The first installment payment shall be 50 percent of the amount assessed, and the second and third installment payments shall each be 25 percent of the amount assessed.

(A) If the first installment payment is not made within 20 days, the commissioner may assess and collect a penalty, in addition to the

assessment, of 10 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(B) If the second installment payment is not made within 20 days of August 31 in each year, the commissioner may assess and collect a penalty, in addition to the assessment, of 10 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(C) If the third installment payment is not made within 20 days of November 30 in each year, the commissioner may assess and collect a penalty, in addition to the assessment, of 10 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(3) In the levying and collection of the assessment, an escrow agent shall not be assessed for, nor be permitted to pay less than, three hundred fifty dollars ($350) per year, per location.

(4) (A) If an escrow agent fails to pay the first assessment on or before the June 30 following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

(B) If an escrow agent fails to pay the second installment payment on or before September 30 in each year, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

(C) If an escrow agent fails to pay the third installment payment on or before December 31 in each year, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

(D) If, after this order is made, a request for a hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a company shall not conduct business pursuant to this division, except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

(f) Fifty dollars ($50) for investigation services in connection with each application for qualification of any person under Section 17200.8, other than investigation services under subdivision (c) of this section.

(g) A fee not to exceed twenty-five dollars ($25) for the filing of a notice or report required by rules adopted pursuant to subdivision (a) or Section 17203.1.

(h) This section shall become operative January 1, 2006.

SEC. 3. Section 17405 of the Financial Code is amended to read:

17405. (a) The business, accounts and records of every person performing as an escrow agent, whether required to be licensed under this division or not, are subject to inspection and examination by the

commissioner at any time without prior notice. The provisions of this section shall not apply to persons specified in Section 17006.

(b) Any person subject to this division shall, upon request, exhibit and allow inspection and copying of any books and records by the commissioner or his or her authorized representative.

(c) (1) The commissioner shall conduct an examination of each licensed escrow agent as described in subdivision (a) as often as the commissioner deems necessary and appropriate, but not less than once every 48 months.

(2) The examination shall be conducted for the 12-month period immediately preceding the date that the examination is commenced unless the commissioner finds, based on information uncovered in the examination or in the most recent independent audit report, that the examination should be extended beyond the 12-month period.

(3) In determining how often an examination shall be conducted, the commissioner may consider each licensed escrow agent's compliance with the requirements set forth in this division and other factors the commissioner may by rule or order designate.

(4) This subdivision shall apply only to examinations commenced after the effective date established by the rule or order of the commissioner for the factors described in paragraph (3).

(d) Notwithstanding subdivision (c), the commissioner may conduct an indoctrination or preliminary examination, or both, under this section of any new licensee within one year of the issuance of the license under this division, and an examination described in subdivision (a) within two years of the issuance of the license under this division.

CHAPTER 500

An act to amend Sections 48690 and 48691 of the Public Resources Code, relating to used oil, and making an appropriation therefor.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) The Watershed Protection Program, the Nonpoint Source Pollution Control Program, and the Coastal Nonpoint Source Control Program were recently established to provide funding for the protection and restoration of beneficial uses of waters of the state.

(b) Local agencies are interested in addressing water pollution problems associated with storm water runoff, including removal of oil and oil byproducts, solid waste, sediment, debris and hydrocarbons, through the acquisition, installation, and maintenance of storm drain inlet filters.

SEC. 2. Section 48690 of the Public Resources Code is amended to read:

48690. A local government is eligible for a block grant pursuant to paragraph (3) of subdivision (a) of Section 48653, if it develops and submits a local used oil collection program to the board pursuant to Section 48691 and files a report pursuant to Section 48674. The board shall make a grant to every local government that submits a program and files a report unless the board finds that the program or its implementation does not comply with criteria contained in this article. The board may make a block grant to another entity that will implement the program of a local government in lieu of making a block grant to that local government with the concurrence of that local government.

SEC. 3. Section 48691 of the Public Resources Code is amended to read:

48691. (a) A local used oil collection program shall provide for used lubricating oil collection by either of the following or a combination of the two:

(1) Ensuring that at least one certified used oil collection center is available for every 100,000 residents not served by curbside used oil collection, which accepts oil from the public at no charge, at least 20 hours each week, on four days each week, of which three hours each week are outside the weekday hours of 8 a.m. through 5:30 p.m.

(2) Providing used oil curbside collection at least once a month.

(b) A local used oil collection program shall include a public education program which shall inform the public of locally available used oil recycling opportunities.

(c) A local government may implement its used oil collection program in conjunction with other similar programs in order to improve used oil recycling efficiency.

(d) (1) A local government that has implemented the used oil collection and education elements of subdivisions (a) and (b) may also include, in the local used oil collection program, provisions for the mitigation and the collection of oil and oil byproducts, including other solid waste that may be mixed with oil or oil byproducts from storm water runoff, including devices to capture that storm water runoff, such as the use of storm drain inlet filter devices.

(2) A local government shall not receive a block grant pursuant to Section 48690 for the purposes identified pursuant to paragraph (1) unless the local government certifies that it has a storm water

management program that is approved by the appropriate California regional water quality control board and that the provisions in the local used oil collection program approved for funding under paragraph (1) are consistent with that approved storm water management program.

CHAPTER 501

An act to amend Section 1206.5 of, to add Section 4052.1 to, and to repeal Section 4102 of, the Business and Professions Code, relating to pharmacists.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 1206.5 of the Business and Professions Code is amended to read:

1206.5. (a) Notwithstanding subdivision (b) of Section 1206, no person shall perform a clinical laboratory test or examination classified as waived under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A person licensed under Chapter 6 (commencing with Section 2700).

(7) A person licensed under Chapter 6.5 (commencing with Section 2840).

(8) A perfusionist if authorized by and performed in compliance with Section 2590.

(9) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(10) A medical assistant, as defined in Section 2069, if the waived test is performed pursuant to a specific authorization meeting the requirements of Section 2069.

(11) A pharmacist, as defined in Section 4036, if ordering drug therapy-related laboratory tests in compliance with clause (ii) of subparagraph (A) of paragraph (5) of, or subparagraph (B) of paragraph (4) of, subdivision (a) of Section 4052, or if performing skin puncture in the course of performing routine patient assessment procedures in compliance with Section 4052.1.

(12) Other health care personnel providing direct patient care.

(b) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of moderate complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A person licensed under Chapter 6 (commencing with Section 2700).

(7) A perfusionist if authorized by and performed in compliance with Section 2590.

(8) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(9) A person performing nuclear medicine technology if authorized by and performed in compliance with Article 6 (commencing with Section 107115) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.

(10) Any person if performing blood gas analysis in compliance with Section 1245.

(11) (A) A person certified as an ‘‘Emergency Medical Technician II’’ or paramedic pursuant to Division 2.5 (commencing with Section

1797) of the Health and Safety Code while providing prehospital medical care, a person licensed as a psychiatric technician under Chapter 10 (commencing with Section 4500) of Division 2, as a vocational nurse pursuant to Chapter 6.5 (commencing with Section 2840) of Division 2, or as a midwife licensed pursuant to Article 24 (commencing with Section 2505) of Chapter 5 of Division 2, or certified by the department pursuant to Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations as a nurse assistant or a home health aide, who provides direct patient care, if the person is performing the test as an adjunct to the provision of direct patient care by the person, is utilizing a point-of-care laboratory testing device at a site for which a laboratory license or registration has been issued, meets the minimum clinical laboratory education, training, and experience requirements set forth in regulations adopted by the department, and has demonstrated to the satisfaction of the laboratory director that he or she is competent in the operation of the point-of-care laboratory testing device for each analyte to be reported.

(B) Prior to being authorized by the laboratory director to perform laboratory tests or examinations, testing personnel identified in subparagraph (A) shall participate in a preceptor program until they are able to perform the clinical laboratory tests or examinations authorized in this section with results that are deemed accurate and skills that are deemed competent by the preceptor. For the purposes of this section, a ''preceptor program'' means an organized system that meets regulatory requirements in which a preceptor provides and documents personal observation and critical evaluation, including review of accuracy, reliability, and validity, of laboratory testing performed.

(12) Any other person within a physician office laboratory if the test is performed under the supervision of the patient's physician and surgeon or podiatrist who shall be accessible to the laboratory to provide onsite, telephone, or electronic consultation as needed, and shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of the clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(13) A pharmacist, if ordering drug therapy-related laboratory tests in compliance with clause (ii) of subparagraph (A) of paragraph (5) of, or subparagraph (B) of paragraph (4) of, subdivision (a) of Section 4052.

(c) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of high complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy

of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory if the test or examination is within a specialty or subspecialty authorized by the person's licensure.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code if the test or examination is within a specialty or subspecialty authorized by the person's certification.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A perfusionist if authorized by and performed in compliance with Section 2590.

(7) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(8) A person performing nuclear medicine technology if authorized by and performed in compliance with Article 6 (commencing with Section 107115) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.

(9) Any person if performing blood gas analysis in compliance with Section 1245.

(10) Any other person within a physician office laboratory if the test is performed under the onsite supervision of the patient's physician and surgeon or podiatrist who shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(d) Clinical laboratory examinations classified as provider-performed microscopy under CLIA may be personally performed using a brightfield or phase/contrast microscope by one of the following practitioners:

(1) A licensed physician and surgeon using the microscope during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group medical practice of which the physician is a member or employee.

(2) A nurse midwife holding a certificate as specified by Section 2746.5, a licensed nurse practitioner as specified in Section 2835.5, or a licensed physician assistant acting under the supervision of a physician

pursuant to Section 3502 using the microscope during the patient's visit on a specimen obtained from his or her own patient or from the patient of a clinic, group medical practice, or other health care provider of which the certified nurse midwife, licensed nurse practitioner, or licensed physician assistant is an employee.

(3) A licensed dentist using the microscope during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group dental practice of which the dentist is a member or an employee.

SEC. 1.5. Section 1206.5 of the Business and Professions Code is amended to read:

1206.5. (a) Notwithstanding subdivision (b) of Section 1206 and except as otherwise provided in Section 1241, no person shall perform a clinical laboratory test or examination classified as waived under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A person licensed under Chapter 6 (commencing with Section 2700).

(7) A person licensed under Chapter 6.5 (commencing with Section 2840).

(8) A perfusionist if authorized by and performed in compliance with Section 2590.

(9) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(10) A medical assistant, as defined in Section 2069, if the waived test is performed pursuant to a specific authorization meeting the requirements of Section 2069.

(11) A pharmacist, as defined in Section 4036, if ordering drug therapy-related laboratory tests in compliance with clause (ii) of subparagraph (A) of paragraph (5) of , or subparagraph (B) of paragraph (4) of, subdivision (a) of Section 4052, or if performing skin puncture

in the course of performing routine patient assessment procedures in compliance with Section 4052.1.

(12) Other health care personnel providing direct patient care.

(b) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of moderate complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A person licensed under Chapter 6 (commencing with Section 2700).

(7) A perfusionist if authorized by and performed in compliance with Section 2590.

(8) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(9) A person performing nuclear medicine technology if authorized by and performed in compliance with Article 6 (commencing with Section 107115) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.

(10) Any person if performing blood gas analysis in compliance with Section 1245.

(11) (A) A person certified or licensed as an ''Emergency Medical Technician II'' or paramedic pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code while providing prehospital medical care, a person licensed as a psychiatric technician under Chapter 10 (commencing with Section 4500) of Division 2, as a vocational nurse pursuant to Chapter 6.5 (commencing with Section 2840) of Division 2, or as a midwife licensed pursuant to Article 24 (commencing with Section 2505) of Chapter 5 of Division 2, or certified by the department pursuant to Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations as a nurse assistant or a home health aide, who provides direct patient care, if the person is performing the test

as an adjunct to the provision of direct patient care by the person, is utilizing a point-of-care laboratory testing device at a site for which a laboratory license or registration has been issued, meets the minimum clinical laboratory education, training, and experience requirements set forth in regulations adopted by the department, and has demonstrated to the satisfaction of the laboratory director that he or she is competent in the operation of the point-of-care laboratory testing device for each analyte to be reported.

(B) Prior to being authorized by the laboratory director to perform laboratory tests or examinations, testing personnel identified in subparagraph (A) shall participate in a preceptor program until they are able to perform the clinical laboratory tests or examinations authorized in this section with results that are deemed accurate and skills that are deemed competent by the preceptor. For the purposes of this section, a ''preceptor program'' means an organized system that meets regulatory requirements in which a preceptor provides and documents personal observation and critical evaluation, including review of accuracy, reliability, and validity, of laboratory testing performed.

(12) Any other person within a physician office laboratory if the test is performed under the supervision of the patient's physician and surgeon or podiatrist who shall be accessible to the laboratory to provide onsite, telephone, or electronic consultation as needed, and shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of the clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(13) A pharmacist, if ordering drug therapy-related laboratory tests in compliance with clause (ii) of subparagraph (A) of paragraph (5) of, or subparagraph (B) of paragraph (4) of, subdivision (a) of Section 4052.

(c) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of high complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory if the test or examination is within a specialty or subspecialty authorized by the person's licensure.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code if the test or examination is within a specialty or subspecialty authorized by the person's certification.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A perfusionist if authorized by and performed in compliance with Section 2590.

(7) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(8) A person performing nuclear medicine technology if authorized by and performed in compliance with Article 6 (commencing with Section 107115) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.

(9) Any person if performing blood gas analysis in compliance with Section 1245.

(10) Any other person within a physician office laboratory if the test is performed under the onsite supervision of the patient's physician and surgeon or podiatrist who shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(d) Clinical laboratory examinations classified as provider-performed microscopy under CLIA may be personally performed using a brightfield or phase/contrast microscope by one of the following practitioners:

(1) A licensed physician and surgeon using the microscope during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group medical practice of which the physician is a member or employee.

(2) A nurse midwife holding a certificate as specified by Section 2746.5, a licensed nurse practitioner as specified in Section 2835.5, or a licensed physician assistant acting under the supervision of a physician pursuant to Section 3502 using the microscope during the patient's visit on a specimen obtained from his or her own patient or from the patient of a clinic, group medical practice, or other health care provider of which the certified nurse midwife, licensed nurse practitioner, or licensed physician assistant is an employee.

(3) A licensed dentist using the microscope during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group dental practice of which the dentist is a member or an employee.

SEC. 2. Section 4052.1 is added to the Business and Professions Code, to read:

4052.1. Notwithstanding Section 2038 or any other provision of law, a pharmacist may perform skin puncture in the course of performing routine patient assessment procedures or in the course of performing any procedure authorized under Section 1206.5. For purposes of this section, ''routine patient assessment procedures'' means: (a) procedures that a patient could, with or without a prescription, perform for himself or herself, or (b) clinical laboratory tests that are classified as waived pursuant to the federal Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Sec. 263a) and the regulations adopted thereunder by the federal Health Care Financing Administration, as authorized by paragraph (11) of subdivision (a) of Section 1206.5. A pharmacist performing these functions shall report the results obtained from a test to the patient and any physician designated by the patient. Any pharmacist who performs the service authorized by this section shall not be in violation of Section 2052.

SEC. 3. Section 4102 of the Business and Professions Code is repealed.

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.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 1206.5 of the Business and Professions Code proposed by both this bill and SB 1174. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 1206.5 of the Business and Professions Code, and (3) this bill is enacted after SB 1174, in which case Section 1 of this bill shall not become operative.

CHAPTER 502

An act relating to water.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. (a) On or before July 1, 2003, the State Water Resources Control Board, in consultation with the State Department of Health Services, shall develop reliable, rapid, and affordable diagnostic tests for measuring indicators of contamination by pathogens in coastal waters.

(b) For the purposes of carrying out subdivision (a), the board shall consult with the University of California, the Southern California Coastal Water Research Project, nonprofit environmental organizations, and private firms with expertise in the development and marketing of diagnostic equipment regarding the kinds of technologies available and the bases for evaluating different types of technologies.

(c) For the purposes of carrying out subdivision (a), the board shall place a priority, to the extent possible, on reliable, rapid, and affordable diagnostic tests that yield analyses within six hours in field conditions without the benefit of laboratory facilities.

(d) On or before July 1, 2003, the state board shall prepare and submit to the Legislature a report with regard to its progress in carrying out this section.

(e) The board shall carry out the duties of this section only to the extent that funds are made available for the purposes of this section.

CHAPTER 503

An act to amend Sections 9561, 9563, 9564, 9569, 9570, 9573, 9574, 9592, 9593, 9692, 9693, 9694, 9695, 9696, 9697, 10511, 10512, and 10610 of, to repeal and add Section 9101 of, and to repeal Sections 9565, 9566, 9567, 9568, 9571, and 9572 of, the Food and Agricultural Code, relating to agricultural disaster prevention.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 9101 of the Food and Agricultural Code is repealed.

SEC. 1.2. Section 9101 is added to the Food and Agricultural Code, to read:

9101. (a) The department shall periodically publish and make available a list of reportable conditions that pose or may pose significant threats to public health, animal health, the environment, or the food

supply. This document shall be known as the ''List of Reportable Conditions for Animals and Animal Products.''

(b) Any licensed veterinarian, any person operating a diagnostic laboratory, or any person who has been informed, recognizes or should recognize, by virtue of education, experience, or occupation, that any animal or animal product is or may be affected by, has been exposed to, or may be transmitting or carrying any condition specified in the ''List of Reportable Conditions for Animals and Animal Products,'' shall report to the department all known information required by the department within the time specified in the ''List of Reportable Conditions for Animals and Animal Products.''

(c) For the purposes of this section, ''animal'' includes any animal, poultry, fowl, bird, or fish.

(d) While the procedure for selecting the conditions required to be reported and the method of preparation and publication of the ''List of Reportable Conditions for Animals and Animal Products'' shall be established by regulation, the selection of the specific conditions identified in the ''List of Reportable Conditions for Animals and Animal Products'' and the timeframe for reporting those conditions are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of Government Code.

(e) Until the department publishes the ''List of Reportable Conditions for Animals and Animal Products,'' the diseases listed in Section 796 of Title 3 of the California Code of Regulations shall constitute the conditions required to be reported pursuant to this section.

SEC. 1.5. Section 9561 of the Food and Agricultural Code is amended to read:

9561. The State Veterinarian may establish such quarantine, sanitary, and police regulations as may be necessary to prevent, circumscribe, or exterminate, any condition designated pursuant to Section 9562.

SEC. 2. Section 9563 of the Food and Agricultural Code is amended to read:

9563. It is unlawful for any person to move or allow to be moved any of the animals, food product from animals, vehicles, farm equipment, farm products, or other materials that are subject to restrictions established pursuant to Section 9562 or 9569 unless that person has first obtained authorization from the State Veterinarian.

SEC. 3. Section 9564 of the Food and Agricultural Code is amended to read:

9564. If it is necessary to restrict the movements of animals pursuant to Section 9562, the State Veterinarian may fix and proclaim the boundaries of a quarantine area in lieu of separate, individual orders issued to each owner pursuant to Section 9562. While the boundaries are

in force, it is unlawful for any person to move or allow to be moved any such animals from or within the boundaries of the quarantine area, unless that person is authorized to do so by the State Veterinarian.

SEC. 4. Section 9565 of the Food and Agricultural Code is repealed.

SEC. 5. Section 9566 of the Food and Agricultural Code is repealed.

SEC. 6. Section 9567 of the Food and Agricultural Code is repealed.

SEC. 7. Section 9568 of the Food and Agricultural Code is repealed.

SEC. 8. Section 9569 of the Food and Agricultural Code is amended to read:

9569. In addition to actions that may be directed by the State Veterinarian pursuant to Section 9562, the State Veterinarian may:

(a) Regulate, restrict, or restrain the movements of persons, vehicles, farm equipment, farm and dairy products, and other property from or into the quarantine area, or from place to place within it, during the existence of the quarantine.

(b) Impose, as a condition to travel through or within the quarantine area, that no person or vehicle which is permitted to travel on any road or highway shall depart from the road or highway while within the quarantine area.

(c) Order all animals within the quarantine area to be detained for purposes of examination or inspection at any place which is specified by him or her in the order.

(d) Cause to be destroyed all animals or property which may be found within the area that are affected with the disease, infestation, or condition or which have been so exposed as to be dangerous to themselves or other animals.

(e) Require a proper disposal to be made of the hide and carcass of any animal which is destroyed.

(f) Adopt and enforce all necessary regulations for cleaning and disinfecting any premises or property where the disease, infestation, or condition exists or has existed by treatment, disposal, or otherwise, and such other regulations as he may deem necessary to eradicate the disease and to prevent its dissemination.

SEC. 9. Section 9570 of the Food and Agricultural Code is amended to read:

9570. If the State Veterinarian invokes Section 9562, and the importation of animals, animal products, or other property from any state, territory, or foreign country may transmit, carry or disseminate the illness, infection, pathogen, contagion, toxin, or condition designated pursuant to Section 9562, the State Veterinarian shall prescribe the conditions, if any, under which these animals, animal products, or property may be imported into this state.

SEC. 10. Section 9571 of the Food and Agricultural Code is repealed.

SEC. 11. Section 9572 of the Food and Agricultural Code is repealed.

SEC. 12. Section 9573 of the Food and Agricultural Code is amended to read:

9573. A quarantine shall not be established by one county or city against another county or city on account of the existence of any disease or condition subject to the authority of the State Veterinarian pursuant to Section 9562 or 9569.

SEC. 13. Section 9574 of the Food and Agricultural Code is amended to read:

9574. (a) Any person who negligently or intentionally violates any state or federal law or regulation, including any quarantine regulation, by importing any animal or other article, which by virtue of being pest infested or disease infected, causes an infestation or infection of a pest, animal, or disease, or causes an existing infestation to spread beyond any quarantine boundaries is liable civilly in a sum not to exceed twenty-five thousand dollars ($25,000) for each act that constitutes a violation of the law or regulation.

(b) The Attorney General, upon request of the State Veterinarian, shall petition the superior court to impose, assess, and recover the sum imposed pursuant to subdivision (a). In determining the amount to be imposed, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation and the nature and persistence of the violation.

(c) The remedy under this section is in addition to, and does not supersede or limit, any and all other remedies, civil or criminal, that are otherwise available to the state.

(d) Any funds recovered pursuant to this section shall be deposited in the Department of Food and Agriculture Fund for emergency pest or disease exclusion, detection, eradication, and research of agricultural plant or animal pests or diseases. These funds may be allocated to cover costs related to the enforcement of this division. These funds are in addition to any funds appropriated for those purposes pursuant to Section 224.

SEC. 14. Section 9592 of the Food and Agricultural Code is amended to read:

9592. The state may contribute toward the payment for the animal or property destroyed if either of the following occurs:

(a) The United States agrees to share equally in the payment.

(b) The State Veterinarian finds that the failure to dispose of the animal, animal product, or property would be or would have been detrimental to human or animal health or the welfare of that animal industry.

SEC. 15. Section 9593 of the Food and Agricultural Code is amended to read:

9593. (a) The value of the animal or property prior to its destruction for which contribution is made pursuant to subdivision (a) of Section 9592 shall be determined by an appraisal process agreed upon by the secretary of the Department of Food and Agriculture and the Secretary of the United States Department of Agriculture.

(b) The value of the animal or property prior to its destruction for which contribution is made pursuant to Section 9592 shall be expeditiously determined by the secretary in consultation with the affected industry.

(c) Nothing in this provision shall be construed to require appraisal or payment before destruction is carried out.

SEC. 16. Section 9692 of the Food and Agricultural Code is amended to read:

9692. It is unlawful for any person to bring or cause to be brought any animal into a quarantined district, area, or premises, without written permission from the State Veterinarian or an authorized representative.

SEC. 17. Section 9693 of the Food and Agricultural Code is amended to read:

9693. It is unlawful for any person to move or cause to be moved any animal from place to place within any quarantined district, area, or premises, without written permission from the State Veterinarian or an authorized representative.

SEC. 18. Section 9694 of the Food and Agricultural Code is amended to read:

9694. It is unlawful for any person to resist the destruction of any animal or property ordered destroyed by the State Veterinarian pursuant to Section 9562.

SEC. 19. Section 9695 of the Food and Agricultural Code is amended to read:

9695. It is unlawful for any person to hide, secrete, or fail to disclose any animal or property that is suffering from, or that has been exposed or potentially exposed to any disease subject to a current quarantine order or to fail to disclose the whereabouts of that animal or property.

SEC. 20. Section 9696 of the Food and Agricultural Code is amended to read:

9696. It is unlawful for any person to fail or refuse to dispose of any property destroyed pursuant to Section 9562 or 9569 in the manner prescribed by the State Veterinarian, when directed or required to do so.

SEC. 21. Section 9697 of the Food and Agricultural Code is amended to read:

9697. It is unlawful for any person to fail or refuse to clean or disinfect any premises in the manner prescribed by the State

Veterinarian, when directed to do so by the State Veterinarian pursuant to Section 9562 or 9569.

SEC. 22. Section 10511 of the Food and Agricultural Code is amended to read:

10511. ''Beef breeds'' means breeds of cattle that are grown for meat production purposes, as determined by the secretary.

SEC. 23. Section 10512 of the Food and Agricultural Code is amended to read:

10512. Female cattle of the beef breeds, which are over 12 months of age, and sold within the state, shall bear evidence of official calfhood brucellosis vaccination by the presence of an official tattoo visible in the right ear, or by any other evidence of vaccination or identification as the department may, by regulation, specify. Official calfhood brucellosis vaccination shall not be required for change of ownership in the following cases:

(a) Spayed heifers identified as the department may specify.

(b) Female cattle of the beef breeds moving directly to a slaughter establishment.

(c) Unvaccinated female cattle of the beef breeds sold to slaughter through approved saleyards.

(d) Unvaccinated female cattle of the beef breeds moving to approved feedlots for a period of time before going to slaughter. These animals shall be moved directly to a slaughter establishment from the approved feedlot.

SEC. 24. Section 10610 of the Food and Agricultural Code is amended to read:

10610. (a) The Secretary of the Department of Food and Agriculture may adopt regulations to control or eradicate cattle diseases, including bovine trichomoniasis, in any of the following ways:

(1) Requiring permits before entry of, and limitations on the importation of, cattle and other animals or materials that might act as a cause or a vector of a disease or condition that is infectious or contagious to cattle.

(2) Limitations on the intrastate or interstate movement of cattle, in compliance with any applicable federal law.

(3) Diagnostic tests, vaccinations, treatments, or other appropriate methods, including, but not limited to, the mandated reporting by designated parties of diseases or suspected diseases.

(4) Notification of owners of cattle that have been exposed, or may have been exposed, to infectious animals or materials.

(5) Similar means that the secretary finds and determines are necessary.

(b) (1) The secretary shall appoint an advisory task force, including, but not limited to, livestock industry representatives and university

researchers, for the purposes of advising the secretary on the control and management of cattle health diseases and evaluating the effectiveness of programs established pursuant to this chapter. The secretary shall consult with the advisory task force prior to the adoption of regulations or the imposition of fees by the secretary.

(2) Members of the advisory task force, or alternate members when acting as members, may be reimbursed, upon request, for necessary expenses incurred by them in the performance of their duties.

(c) (1) Any person that willfully and knowingly violates any regulation adopted pursuant to this chapter is guilty of a misdemeanor.

(2) The secretary may, at his or her discretion, prosecute civilly or seek civil penalties, pursuant to Sections 9166 and 9167.

(d) The secretary may impose fees to offset the costs of any program established pursuant to this section, provided that the total fees collected do not exceed the actual costs of regulation or impair the department's responsibilities pursuant to this chapter.

(e) The secretary is authorized to establish accounts within the Food and Agriculture Fund as necessary to efficiently administer the department's responsibilities pursuant to this chapter.

(f) Nothing in this chapter shall be construed to limit or restrict the authority granted to the State Veterinarian in Section 9562.

SEC. 25. 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.

CHAPTER 504

An act to amend Sections 15210, 15240, 15300, 15302, 22452, 22526, 34510, and 40001 of, to add Section 15312 to, and to repeal Section 35559 of, the Vehicle Code, relating to vehicles.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 15210 of the Vehicle Code is amended to read:

15210. Notwithstanding any other provision of this code, as used in this chapter:

(a) ''Commercial driver's license'' means a driver's license issued by a state or other jurisdiction, in accordance with the standards contained in Part 383 of Title 49 of the Code of Federal Regulations, which authorizes the licenseholder to operate a class or type of commercial motor vehicle.

(b) (1) ''Commercial motor vehicle'' means any vehicle or combination of vehicles which requires a class A or class B license, or a class C license with an endorsement issued pursuant to paragraph (4) of subdivision (a) of Section 15278.

(2) ''Commercial motor vehicle'' does not include any of the following:

(A) A recreational vehicle, as defined in Section 799.24 of the Civil Code.

(B) Military equipment operated by noncivilian personnel, which is owned or operated by the United States Department of Defense, including the National Guard, as provided in Parts 383 and 391 of Title 49 of the Code of Federal Regulations.

(C) An implement of husbandry operated by a person who is not required to obtain a driver's license under this code.

(D) Vehicles operated by persons exempted pursuant to Section 25163 of the Health and Safety Code or a vehicle operated in an emergency situation at the direction of a peace officer pursuant to Section 2800.

(c) ''Controlled substance'' has the same meaning as defined by the federal Controlled Substances Act (21 U.S.C. Sec. 802).

(d) ''Disqualification'' means a prohibition against driving a commercial motor vehicle.

(e) ''Employer'' means any person, including the United States, a state, or political subdivision of a state, who owns or leases a commercial motor vehicle or assigns drivers to operate such a vehicle. A person who employs himself or herself as a commercial vehicle driver is considered to be both an employer and a driver for purposes of this chapter.

(f) ''Felony'' means an offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year.

(g) ''Gross combination weight rating'' means the value specified by the manufacturer as the maximum loaded weight of a combination or articulated vehicle. In the absence of a value specified by the manufacturer, gross vehicle weight rating will be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed units and any load thereon.

(h) ''Gross vehicle weight rating'' means the value specified by the manufacturer as the maximum loaded weight of a single vehicle, as defined in Section 390.

(i) ''Serious traffic violation'' includes any of the following:

(1) Excessive speeding, as defined pursuant to the federal Commercial Motor Vehicle Safety Act (P.L. 99-570).

(2) Reckless driving, as defined pursuant to the federal Commercial Motor Vehicle Safety Act (P.L. 99-570).

(3) A violation of any state or local law involving the safe operation of a motor vehicle, arising in connection with a fatal traffic accident.

(4) Any other similar violation of a state or local law involving the safe operation of a motor vehicle, as defined pursuant to the Commercial Motor Vehicle Safety Act (Title XII of P.L. 99-570).

(5) Driving a commercial motor vehicle without a commercial driver's license.

(6) Driving a commercial motor vehicle without the driver having in his or her possession a commercial driver's license, unless the driver provides proof at the subsequent court appearance that he or she held a valid commercial driver's license on the date of the violation.

(7) Driving a commercial motor vehicle when the driver has not met the minimum testing standards for that vehicle as to the class or type of cargo the vehicle is carrying.

In the absence of a federal definition, existing definitions under this code shall apply.

(j) ''State'' means a state of the United States or the District of Columbia.

(k) ''Tank vehicle'' means any commercial motor vehicle that is designed to transport any liquid or gaseous material within a tank that is permanently or temporarily attached to the vehicle or the chassis, including, but not limited to, cargo tanks and portable tanks, as defined in Part 171 of Title 49 of the Code of Federal Regulations. This definition does not include portable tanks having a rated capacity under 1,000 gallons.

SEC. 2. Section 15240 of the Vehicle Code is amended to read:

15240. No employer shall knowingly allow, permit, require, or authorize a driver to drive a commercial motor vehicle under any of the following conditions:

(a) The driver has a driver's license or privilege suspended, revoked, or canceled by any state or has been disqualified from operating a commercial motor vehicle.

(b) The driver has more than one driver's license.

(c) The driver or the commercial motor vehicle or motor carrier operation is subject to an out-of-service order as described in subdivision (b) of Section 2800.

(d) In violation of any law or regulation pertaining to a railroad-highway grade crossing.

SEC. 3. Section 15300 of the Vehicle Code is amended to read:

15300. (a) No driver of a commercial motor vehicle may operate a commercial motor vehicle for a period of one year if the driver is convicted of a first violation of any of the following:

(1) Driving a commercial motor vehicle while under the influence of alcohol or a controlled substance.

(2) Leaving the scene of an accident involving a commercial motor vehicle operated by the driver.

(3) Driving a commercial motor vehicle when the driver's commercial driver's license is revoked, suspended, or canceled based on the driver's operation of a commercial motor vehicle or when the driver is disqualified from operating a commercial motor vehicle based on the driver's operation of a commercial motor vehicle.

(4) Causing a fatality involving conduct defined pursuant to subparagraph (E) of paragraph (1) of subsection (b) of Section 31310 of Title 49 of the United States Code.

(5) A violation of Section 2800.1, 2800.2, or 2800.3 that involves a commercial motor vehicle.

(b) If any of the above violations, or a violation listed in paragraph (2) of subdivision (a) of Section 13350 or Section 13352 or 13357, occurred while transporting a hazardous material, the period specified in subdivision (a) shall be three years.

SEC. 4. Section 15302 of the Vehicle Code is amended to read:

15302. No driver of a commercial motor vehicle may operate a commercial motor vehicle for the rest of his or her life if convicted of more than one violation of any of the following:

(a) Driving a commercial motor vehicle while under the influence of alcohol or a controlled substance.

(b) Leaving the scene of an accident involving a commercial motor vehicle operated by the driver.

(c) Using a commercial motor vehicle in the commission of more than one felony arising out of separate occasions of arrest or citation.

(d) Driving a commercial motor vehicle when the driver's commercial driver's license is revoked, suspended, or canceled based on the driver's operation of a commercial motor vehicle or when the driver is disqualified from operating a commercial motor vehicle based on the driver's operation of a commercial motor vehicle.

(e) Causing a fatality involving conduct defined pursuant to subparagraph (E) of paragraph (1) of subsection (c) of Title 49 of Section 31310 of the United States Code.

(f) A violation of Section 2800.1, 2800.2, or 2800.3 that involves a commercial motor vehicle.

(e) Any combination of the above violations.

SEC. 5. Section 15312 is added to the Vehicle Code, to read:

15312. No driver shall operate a commercial motor vehicle for the following periods:

(a) Not less than 60 days if that person is convicted of a violation of Section 2800, 21462, 22451, or 22452, or subdivision (c) of Section 22526, involving a commercial motor vehicle and the violation occurred at a railroad-highway crossing.

(b) Not less than 120 days if that person is convicted of a violation of Section 2800, 21462, 22451, or 22452, or subdivision (c) of Section 22526, involving a commercial motor vehicle, and that violation occurred at a railroad-highway crossing, during any three-year period of a separate, prior offense of a railroad-highway grade crossing violation, that resulted in a conviction.

(c) Not less than one year if that person is convicted of a violation of Section 2800, 21462, 22451, or 22452, or subdivision (c) of Section 22526, involving a commercial motor vehicle, and that violation occurred at a railroad-highway crossing, at a railroad-highway grade crossing, during any three-year period of two or more prior offenses of a railroad-highway grade crossing violation, that resulted in convictions.

SEC. 6. Section 22452 of the Vehicle Code is amended to read:

22452. (a) Subdivisions (b) and (c) apply to the operation of the following vehicles:

(1) Any bus or farm labor vehicle carrying passengers.

(2) Any motortruck transporting employees in addition to those riding in the cab.

(3) Any schoolbus and any school pupil activity bus transporting school pupils, except as otherwise provided in paragraph (4) of subdivision (c).

(4) Every commercial motor vehicle transporting any quantity of a Division 2.3 chlorine, as classified by Title 49 of the Code of Federal Regulations.

(5) Every commercial motor vehicle that is required to be marked or placarded in accordance with the regulations of Title 49 of the Code of Federal Regulations with one of the following federal classifications:

(A) Division 1.1.

(B) Division 1.2, or Division 1.3.

(C) Division 2.3 Poison gas.

(D) Division 4.3.

(E) Class 7.

(F) Class 3 Flammable.

(G) Division 5.1.

(H) Division 2.2.

(I) Division 2.3 Chlorine.

(J) Division 6.1 Poison.
(K) Division 2.2 Oxygen.
(L) Division 2.1.
(M) Class 3 Combustible liquid.
(N) Division 4.1.
(O) Division 5.1.
(P) Division 5.2.
(Q) Class 8.
(R) Class Division 1.4.

(S) Every cargo tank motor vehicle, whether loaded or empty, used for the transportation of any hazardous material, as defined in Parts 107 to 180, inclusive, of Title 49 of the Code of Federal Regulations.

(6) Every cargo tank motor vehicle transporting a commodity that at the time of loading has a temperature above its flashpoint, as determined under Section 173.120 of Title 49 of the Code of Federal Regulations.

(7) Every cargo tank motor vehicle, whether loaded or empty, transporting any commodity under exemption in accordance with Subpart B of Part 107 of Title 49 of the Code of Federal Regulations.

(b) Before traversing a railroad grade crossing, the driver of any vehicle described in subdivision (a) shall stop that vehicle not less than 15 nor more than 50 feet from the nearest rail of the track and while so stopped shall listen, and look in both directions along the track, for any approaching train and for signals indicating the approach of a train, and shall not proceed until he or she can do so safely. Upon proceeding, the gears shall not be shifted manually while crossing the tracks.

(c) No stop need be made at any crossing in the following circumstances:

(1) Of railroad tracks running along and upon the roadway within a business or residence district.

(2) Where a traffic officer or an official traffic control signal directs traffic to proceed.

(3) Where an exempt sign was authorized by the Public Utilities Commission prior to January 1, 1978.

(4) Where an official railroad crossing stop exempt sign in compliance with Section 21400 has been placed by the Department of Transportation or a local authority pursuant to Section 22452.5. This paragraph shall not apply with respect to any schoolbus or to any school pupil activity bus.

SEC. 7. Section 22526 of the Vehicle Code is amended to read:

22526. (a) Notwithstanding any official traffic control signal indication to proceed, a driver of a vehicle shall not enter an intersection or marked crosswalk unless there is sufficient space on the other side of the intersection or marked crosswalk to accommodate the vehicle driven without obstructing the through passage of vehicles from either side.

(b) A driver of a vehicle which is making a turn at an intersection who is facing a steady circular yellow or yellow arrow signal shall not enter the intersection or marked crosswalk unless there is sufficient space on the other side of the intersection or marked crosswalk to accommodate the vehicle driven without obstructing the through passage of vehicles from either side.

(c) A driver of a vehicle shall not enter a railroad or rail transit crossing, notwithstanding any official traffic control device or signal indication to proceed, unless there is sufficient space on the other side of the railroad or rail transit crossing to accommodate the vehicle driven or there is sufficient undercarriage clearance to cross the intersection without obstructing the through passage of a railway vehicle, including, but not limited to, a train, trolley, or city transit vehicle.

(d) A local authority may post appropriate signs at the entrance to intersections indicating the prohibition in subdivisions (a), (b), and (c).

(e) A violation of this section is not a violation of a law relating to the safe operation of vehicles and is the following:

(1) A stopping violation when a notice to appear has been issued by a peace officer described in Section 830.1 or 830.2 of the Penal Code.

(2) A parking violation when a notice of parking violation is issued by a person, other than a peace officer described in paragraph (1), who is authorized to enforce parking statutes and regulations.

(f) This section shall be known and may be cited as the Anti-Gridlock Act of 1987.

SEC. 8. Section 34510 of the Vehicle Code is amended to read:

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

SEC. 9. Section 35559 of the Vehicle Code is repealed.

SEC. 10. Section 40001 of the Vehicle Code is amended to read:

40001. (a) It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to cause the operation of the vehicle upon a highway in any manner contrary to law.

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

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

(2) Not equipped as required in this code.

(3) Not in compliance with the size, weight, or load provisions of this code.

(4) Not in compliance with the regulations promulgated pursuant to this code, or with applicable city or county ordinances adopted pursuant to this code.

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

(c) Any employer who violates an out-of-service order, that complies with Section 396.9 of Title 49 of the Code of Federal Regulations, or who knowingly requires or permits a driver to violate or fail to comply with that out-of-service order, is guilty of a misdemeanor.

(d) An employer who is convicted of allowing, permitting, requiring, or authorizing a driver to operate a commercial motor vehicle in violation of any statute or regulation pertaining to a railroad-highway grade crossing is subject to a fine of not more than ten thousand dollars ($10,000).

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

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

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

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction,

within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 505

An act to amend Sections 21200.1, 21200.6, and 21201.2 of the Financial Code, relating to pawnbrokers.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 21200.1 of the Financial Code is amended to read:

21200.1. A loan setup fee not to exceed three dollars ($3) may be charged for each loan, up to and including fifty dollars ($50). A loan setup fee of five dollars ($5) may be charged for loans in excess of fifty dollars ($50). Loan setup fees are in addition to any other allowed charges.

SEC. 2. Section 21200.6 of the Financial Code is amended to read:

21200.6. (a) In addition to other allowed charges, at the time property is redeemed a pawnbroker may collect a handling and storage charge for certain pawned articles. Irrespective of the duration of the loan, the maximum amount that may be charged pursuant to this section is in accordance with the following schedule:

(1) Five dollars ($5) for any article that cannot be contained within one cubic foot.

(2) Ten dollars ($10) for any article that cannot be contained within three cubic feet.

(3) Twenty dollars ($20) for any article that cannot be contained within six cubic feet and one dollar ($1) for each additional cubic foot in excess of six cubic feet.

(b) No storage charge is allowed for any article that can be contained within one cubic foot.

(c) For purposes of this section, cubic feet shall be determined by multiplying the width of an article, at its greatest width, by the depth of an article, at its greatest depth, by the height of an article, at its greatest height.

SEC. 3. Section 21201.2 of the Financial Code is amended to read:

21201.2. If the pledgor fails to redeem any pawned item during the loan period, thereby obliging the pawnbroker to mail the notice required

under Section 21201, the pawnbroker may charge a fee of up to three dollars ($3) for services and costs pertaining to the preparation of the notice, in addition to any other allowed charges.

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.

CHAPTER 506

An act to add Section 1374.51 to the Health and Safety Code, to add Section 10144.6 to the Insurance Code, and to amend Sections 5008.2, 5328, and 5332 of, and to add Sections 5012, 5150.05, and 14021.8 to, the Welfare and Institutions Code, relating to mental health.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

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

(a) Many families of persons with serious mental illness find the Lanterman-Petris-Short Act system difficult to access and not supportive of family information regarding history and symptoms.

(b) Persons with mental illness are best served in a system of care that supports and acknowledges the role of the family, including parents, children, spouses, significant others, and consumer-identified natural resource systems.

SEC. 2. It is the intent of the Legislature that the Lanterman-Petris-Short Act system procedures be clarified to ensure that families are a part of the system response, subject to the rules of evidence and court procedures.

SEC. 3. Section 1374.51 is added to the Health and Safety Code, to read:

1374.51. No plan may utilize any information regarding whether an enrollee's psychiatric inpatient admission was made on a voluntary or involuntary basis for the purpose of determining eligibility for claim reimbursement.

SEC. 4. Section 10144.6 is added to the Insurance Code, to read:

10144.6. No disability insurer may utilize any information regarding whether a beneficiary's psychiatric inpatient admission was made on a voluntary or involuntary basis for the purpose of determining eligibility for claim reimbursement.

SEC. 5. Section 5008.2 of the Welfare and Institutions Code is amended to read:

5008.2. (a) When applying the definition of mental disorder for the purposes of Articles 2 (commencing with Section 5200), 4 (commencing with Section 5250), and 5 (commencing with Section 5275) of Chapter 2 and Chapter 3 (commencing with Section 5350), the historical course of the person's mental disorder, as determined by available relevant information about the course of the person's mental disorder, shall be considered when it has a direct bearing on the determination of whether the person is a danger to others, or to himself or herself, or is gravely disabled, as a result of a mental disorder. The historical course shall include, but is not limited to, evidence presented by persons who have provided, or are providing, mental health or related support services to the patient, the patient's medical records as presented to the court, including psychiatric records, or evidence voluntarily presented by family members, the patient, or any other person designated by the patient. Facilities shall make every reasonable effort to make information provided by the patient's family available to the court. The hearing officer, court, or jury shall exclude from consideration evidence it determines to be irrelevant because of remoteness of time or dissimilarity of circumstances.

(b) This section shall not be applied to limit the application of Section 5328 or to limit existing rights of a patient to respond to evidence presented to the court.

SEC. 6. Section 5012 is added to the Welfare and Institutions Code, to read:

5012. The fact that a person has been taken into custody under this part may not be used in the determination of that person's eligibility for payment or reimbursement for mental health or other health care services for which he or she has applied or received under the Medi-Cal program, any health care service plan licensed under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code), or any insurer providing health coverage doing business in the state.

SEC. 7. Section 5150.05 is added to the Welfare and Institutions Code, to read:

5150.05. (a) When determining if probable cause exists to take a person into custody, or cause a person to be taken into custody, pursuant to Section 5150, any person who is authorized to take that person, or cause that person to be taken, into custody pursuant to that section shall

consider available relevant information about the historical course of the person's mental disorder if the authorized person determines that the information has a reasonable bearing on the determination as to whether the person is a danger to others, or to himself or herself, or is gravely disabled as a result of the mental disorder.

(b) For purposes of this section, ''information about the historical course of the person's mental disorder'' includes evidence presented by the person who has provided or is providing mental health or related support services to the person subject to a determination described in subdivision (a), evidence presented by one or more members of the family of that person, and evidence presented by the person subject to a determination described in subdivision (a) or anyone designated by that person.

(c) If the probable cause in subdivision (a) is based on the statement of a person other than the one authorized to take the person into custody pursuant to Section 5150, a member of the attending staff, or a professional person, the person making the statement shall be liable in a civil action for intentionally giving any statement that he or she knows to be false.

(d) This section shall not be applied to limit the application of Section 5328.

SEC. 8. Section 5328 of the Welfare and Institutions Code is amended to read:

5328. All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(b) When the patient, with the approval of the physician, licensed psychologist, or social worker with a master's degree in social work, who is in charge of the patient, designates persons to whom information

or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him or her in confidence by members of a patient's family.

(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him or her in confidence by members of a patient's family.

(e) For research, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

_____

Date

As a condition of doing research concerning persons who have received services from ____ (fill in the facility, agency or person), I, ____, agree to obtain the prior informed consent of persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services so that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Committee on Senate Rules or the Committee on Assembly Rules for the purposes of legislative investigation authorized by the committee.

(i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

(j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on ''multidisciplinary personnel'' teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Sections 4070 and 5624.

(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.

(p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.

(q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 341.5 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, ''qualified professional persons'' means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Services under Section 309 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, ''psychotherapist'' means anyone so defined within Section 1010 of the Evidence Code.

(s) To persons serving on an interagency case management council established in compliance with Section 5606.6 to the extent necessary to perform its duties. This council shall attempt to obtain the consent of the client. If this consent is not given by the client, the council shall justify in the client's chart why these records are necessary for the work of the council.

(t) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, ''designated officer'' and ''emergency response employee'' have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(u) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

(v) The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(w) This section shall not be limited by Section 5150.05 or 5332.

SEC. 8.5. Section 5328 of the Welfare and Institutions Code is amended to read:

5328. All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(b) When the patient, with the approval of the physician, licensed psychologist, social worker with a master's degree in social work, or licensed marriage and family therapist, who is in charge of the patient, designates persons to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family. Nothing in this subdivision shall be construed to authorize a licensed marriage and family therapist to provide services or to be in charge of a patient's care beyond his or her lawful scope of practice.

(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(e) For research, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by

the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

_____
Date

As a condition of doing research concerning persons who have received services from ____ (fill in the facility, agency or person), I, ____, agree to obtain the prior informed consent of such persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Committee on Senate Rules or the Committee on Assembly Rules for the purposes of legislative investigation authorized by the committee.

(i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

(j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the

facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on ''multidisciplinary personnel'' teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Sections 4070 and 5624.

(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.

(p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.

(q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 341.5 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, ''qualified professional persons'' means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Services under Section 309 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made

over a two-week period to get a response, the information may be released upon request of the blood relative.

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, ''psychotherapist'' means anyone so defined within Section 1010 of the Evidence Code.

(s) To persons serving on an interagency case management council established in compliance with Section 5606.6 to the extent necessary to perform its duties. This council shall attempt to obtain the consent of the client. If this consent is not given by the client, the council shall justify in the client's chart why these records are necessary for the work of the council.

(t) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, ''designated officer'' and ''emergency response employee'' have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(u) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is

confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

(v) The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(w) This section shall not be limited by Section 5150.05 or 5332.

SEC. 9. Section 5332 of the Welfare and Institutions Code is amended to read:

5332. (a) Antipsychotic medication, as defined in subdivision (*l*) of Section 5008, may be administered to any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, if that person does not refuse that medication following disclosure of the right to refuse medication as well as information required to be given to persons pursuant to subdivision (c) of Section 5152 and subdivision (b) of Section 5213.

(b) If any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, and for whom antipsychotic medication has been prescribed, orally refuses or gives other indication of refusal of treatment with that medication, the medication shall be administered only when treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient, and upon a determination of that person's incapacity to refuse the treatment, in a hearing held for that purpose.

(c) Each hospital in conjunction with the hospital medical staff or any other treatment facility in conjunction with its clinical staff shall develop

internal procedures for facilitating the filing of petitions for capacity hearings and other activities required pursuant to this chapter.

(d) When any person is subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, the agency or facility providing the treatment shall acquire the person's medication history, if possible.

(e) In the case of an emergency, as defined in subdivision (m) of Section 5008, a person detained pursuant to Section 5150, 5250, 5260, or 5270.15 may be treated with antipsychotic medication over his or her objection prior to a capacity hearing, but only with antipsychotic medication that is required to treat the emergency condition, which shall be provided in the manner least restrictive to the personal liberty of the patient. It is not necessary for harm to take place or become unavoidable prior to intervention.

SEC. 10. Section 14021.8 is added to the Welfare and Institutions Code, to read:

14021.8. The department may not utilize any information regarding whether a beneficiary's psychiatric inpatient admission was made on a voluntary or involuntary basis for the purpose of determining eligibility for Medi-Cal claim reimbursement.

SEC. 11. Section 8.5 of this bill incorporates amendments to Section 5328 of the Welfare and Institutions Code proposed by both this bill and AB 213. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 5328 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 213, in which case Section 8 of this bill shall not become operative.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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.

CHAPTER 507

An act to add Section 1635.5 to the Business and Professions Code, relating to dentistry, and making an appropriation therefor.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. It is the intent of the Legislature to increase access to dental care for children and adults in California, particularly in those areas of the state that have few or no practicing dentists. According to a January 2000, report entitled ''Geographic Distribution of Dentists in California'' by the Center for California Health Workforce Studies at the University of California, San Francisco, areas with few or no practicing dentists are more likely to be rural or to have higher minority populations, lower median incomes, and a higher percentage of children, compared to areas without a shortage of practicing dentists.

SEC. 2. Section 1635.5 is added to the Business and Professions Code, to read:

1635.5. (a) Notwithstanding Section 1634, the board may grant a license to practice dentistry to an applicant who has not taken an examination before the board, if the applicant submits all of the following to the board:

(1) A completed application form and all fees required by the board.

(2) Proof of a current license issued by another state to practice dentistry that is not revoked or suspended or otherwise restricted.

(3) Proof that the applicant has been in clinical practice, or has been a full-time faculty member in an accredited dental education program, for a minimum of 1,000 hours per year for at least five years preceding the date of his or her application under this section. The clinical practice requirement shall be deemed met if documentation of any of the following is submitted:

(A) The applicant may receive credit for two of the five years of clinical practice by demonstrating completion of a residency training program accredited by the American Dental Association Commission on Dental Accreditation, including, but not limited to, a general practice residency, an advanced education in general dentistry program, or a training program in a specialty recognized by the American Dental Association.

(B) If an applicant provides proof of at least two years of clinical practice or receives two years of credit as defined in subparagraph (A), he or she may commit to completing the remainder of the five-year requirement by filing with the board a copy of a pending contract to practice dentistry full time in a primary care clinic licensed under subdivision (a) of Section 1204 of the Health and Safety Code or in a primary care clinic exempt from licensure pursuant to subdivision (c) of Section 1206 of the Health and Safety Code, or in a clinic owned or operated by a public hospital or health system, or a clinic owned and operated by a hospital that maintains the primary contract with a county government to fill the county's role under Section 17000 of the Welfare

and Institutions Code. The board may periodically request verification of compliance with these requirements, and may revoke the license upon a finding that the employment requirement, or any other requirement of this subparagraph, has not been met.

(C) If an applicant provides proof of at least two years of clinical practice or receives two years of credit as defined in subparagraph (A), he or she may commit to completing the remainder of the five-year requirement by filing with the board a copy of a pending contract to teach or practice dentistry full time in an accredited dental education program as approved by the Dental Board of California. The board may periodically request verification of compliance with these requirements, and may revoke the license upon a finding that the employment requirement, or any other requirement of this subparagraph, has not been met.

(4) Proof that the applicant has not been subject to disciplinary action by any state in which he or she is or has been previously licensed to practice dentistry. If the applicant has been subject to disciplinary action, the board shall review that action to determine if it warrants refusal to issue a license to the applicant.

(5) A signed release allowing the disclosure of information from the National Practitioner Data Bank and the verification of registration status with the federal Drug Enforcement Administration. The board shall review this information to determine if it warrants refusal to issue a license to the applicant.

(6) Proof that the applicant has not failed the examination for licensure to practice dentistry under this chapter within five years prior to the date of his or her application for a license under this section.

(7) Documentation of 50 units of continuing education completed within two years of the date of his or her application under this section. The continuing education shall include the mandatory coursework prescribed by the board pursuant to subdivision (b) of Section 1645.

(8) Any other information as specified by the board to the extent it is required of applicants for licensure by examination under this article.

(b) The board shall provide in the application packet to each out-of-state dentist pursuant to this section the following information:

(1) The location of dental manpower shortage areas that exist in the state.

(2) Those not-for-profit clinics and public hospitals seeking to contract with licensees for dental services.

(c) (1) The board shall review the impact of this section on the availability of dentists in California and report to the appropriate policy and fiscal committees of the Legislature by January 1, 2005. The report shall include a separate section providing data specific to those dentists who intend to fulfill the alternative clinical practice requirements of

subparagraph (B) of paragraph (3) of subdivision (a). The report shall include, but not be limited to, all of the following:

(A) The total number of applicants from other states who have sought licensure.

(B) The number of dentists from other states licensed pursuant to this section, as well as the number of licenses not granted and the reasons why each license was not granted.

(C) The location of the practice of dentists licensed pursuant to this section.

(D) The number of dentists licensed pursuant to this section who establish a practice in a rural area or in an area designated as having a shortage of practicing dentists or no dentists at all.

(E) The length of time dentists licensed pursuant to this section maintained their practice in the reported location. This information shall be reported separately for dentists described in subparagraphs (C) and (D).

(2) In identifying a dentist's location of practice, the board shall use Medical Service Study Areas or other appropriate geographic descriptions for regions of the state.

(3) If appropriate, the board may report the information required by paragraph (1) separately for primary care dentists and specialists.

(d) This section shall become operative on July 1, 2002.

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.

CHAPTER 508

An act to amend Sections 14037.6 and 14068 of the Corporations Code, and to amend Section 63073 of the Government Code, relating to small business programs.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 14037.6 of the Corporations Code is amended to read:

14037.6. (a) (1) The Director of Finance, with the approval of the Governor, may transfer moneys in the Special Fund for Economic Uncertainties to the Small Business Expansion Fund for use by the Office of Small Business in the Technology, Trade, and Commerce Agency, in an amount necessary to make loan guarantees pursuant to this chapter. However, no more than five million dollars ($5,000,000) may be transferred pursuant to this section in connection with any single declared disaster.

(2) The Director of Finance, or his or her designee, within 30 days of any transfer made pursuant to this section, shall provide notice of the amount of the transfer to the chair of the Joint Legislative Budget Committee and the chair of the committee in each house that considers appropriations.

(b) The Governor should utilize this authority to prevent business insolvencies and loss of employment in an area affected by a state of emergency throughout the state and declared a disaster by the President of the United States, or by the Administrator of the United States Small Business Administration, or by the Governor of California.

(c) This section shall remain in effect until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

SEC. 2. Section 14068 of the Corporations Code is amended to read:

14068. To implement its responsibilities, the corporation shall undertake a program that shall include, but not be limited to, the following:

(a) Develop and implement a program of outreach to low-resource businesses. The corporations located in rural areas shall give priority to low-resource farmers, rural, and agriculturally related businesses.

(b) Work with other organizations and lenders to locate, identify, and assist those unable to obtain credit through conventional sources because of reasons such as low equity, inadequate collateral, unacceptable legal structure (such as a co-op or nonprofit organization), management inadequacies, and language problems.

(c) To the extent possible, bring all possible financial resources (low-interest lenders, BIDCOs, MESBICs, other guarantors, etc.) to bear on borrower's problems.

(d) Provide assistance to businesses receiving loans or guarantees that will maximize the probability of loan repayment.

(e) Develop and implement a program for increasing program resources through private sector involvement and nonstate funds.

(f) Develop a program for collecting and liquidating defaulted loans so that the corporations can qualify to become full-service lenders under the Small Business Administration. Corporations located in rural areas shall, in addition, try to qualify for lender status under the Farmers Home Administration.

(g) Become an agent for other lenders and guarantors.

SEC. 3. Section 63073 of the Government Code is amended to read:

63073. The Treasurer, the Governor, or the Lieutenant Governor is an elected representative of the state authorized to fulfill the public approval requirement of Section 147(f) of Title 26 of the Internal Revenue Code (26 U.S.C.A. Sec. 147(f)), including subsequent amendments thereto, or its successor provision, for the issuance of tax-exempt bonds issued by the bank, a special purpose trust, or a sponsor pursuant to this chapter.

CHAPTER 509

An act to add Sections 2425.1 and 2425.3 to the Business and Professions Code, relating to the healing arts.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 2425.1 is added to the Business and Professions Code, to read:

2425.1. The Legislature finds and declares all of the following:

(a) Currently, California is experiencing an access to health care crisis that, in large measure, is the result of medical group insolvency, health facility closures, low or no reimbursement rates, and an increasing number of uninsured.

(b) Adding to the access to health care crisis is a state population that is growing in cultural and linguistic diversity as well as in absolute numbers.

(c) On paper, California appears to have an adequate number of physicians in most areas of the state. California, however, does not have data indicating the cultural and linguistic background of licensed physicians, how many physicians are actively practicing medicine, how many physicians are practicing part time, how many physicians have retired from practice, or how many physicians have moved into administrative positions and no longer treat patients.

(d) In order to fully understand and cope with California's access to health care crisis, it is necessary to collect data concerning the status and scope of practice of California's licensed physicians as well as his or her cultural and linguistic background.

SEC. 2. Section 2425.3 is added to the Business and Professions Code, to read:

2425.3. (a) The Medical Board of California shall request that a licensed physician report to the board at the time of license renewal any specialty board certification he or she holds issued by a member board of the American Board of Medical Specialties or approved by the Medical Board of California.

(b) A licensed physician shall also report to the board at the time of license renewal, his or her practice status, designated as one of the following:

(1) Full-time practice in California.

(2) Full-time practice outside of California.

(3) Part-time practice in California.

(4) Medical administrative employment that does not include direct patient care.

(5) Retired.

(6) Other practice status, as may be further defined by the Division of Licensing.

(c) A licensed physician may report to the board at the time of license renewal, and the board shall collect, information regarding his or her cultural background and foreign language proficiency.

(d) The information collected pursuant to this section may be placed on the board's Internet Web site.

(e) This section shall be implemented on or before July 1, 2003.

CHAPTER 510

An act to amend Sections 63901 and 63902 of, and to add Sections 63901.3, 63901.4, and 63905 to, the Food and Agricultural Code, relating to agricultural and seafood industries.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 63901 of the Food and Agricultural Code is amended to read:

63901. The Legislature hereby finds and declares that the agricultural and seafood industries are vitally important elements of the state's economy and are supported by state established commissions and councils specified in this division that are mandated to enhance and preserve the economic interests of the State of California and are intended to do all of the following:

(a) Implement public policy through their expressive conduct. The programs conducted by these commissions and councils are among the broad range of state-mandated regulatory programs that are funded by the public through user fees assessed in accordance with each person's relationship to a particular program.

(b) Reflect a continuing commitment by the State of California to its agricultural and seafood industries that are integral to its economy. These industries are a source of substantial employment for the state's citizens, produce needed tax revenues for the support of state and local government, encourage responsible stewardship of valuable land and marine resources, and produce substantial necessary food and fiber for the state, nation, and world.

(c) Represent a policy of support for persons engaged in the agricultural and seafood industries, which are critically important elements of the state's economy. These commissions and councils are particularly important for the continued success of California's unique agricultural and seafood industries which tend to be decentralized with many small entities operating in diverse locations.

(d) Provide benefit to the entire industry and all of the people of this state. The commissions and councils are not enacted, and are not intended to produce measurable benefit, on an individual basis, and their successes should be evaluated by analyzing the extent to which they have improved the overall conditions for the particular commodity subject to the commission's or council's jurisdiction with resulting benefit to the overall economy of the state.

(e) Enhance the image of California agricultural and seafood products to increase the overall demand for these commodities. In this fashion, the Legislature intends that the commissions and councils operate primarily for the purpose of creating a more receptive environment for the commodity and for the individual efforts of those persons in the industry, and thereby compliment individual, targeted, and specific activities.

SEC. 2. Section 63901.3 is added to the Food and Agricultural Code, to read:

63901.3. The Legislature further finds and declares that commission and council activities are essential to the goals and interests of the State of California that include, but are not limited to, all of the following:

(a) Research, including, but not limited to, production research, food safety research, marketing research and trends analysis, and research relating to crop protection and production materials.

(b) Elimination of tariff and nontariff trade barriers.

(c) Consumer education relating to the health and other benefits of using and consuming agricultural and seafood products.

(d) Consumer education relating to environmental protection and conservation.

(e) Demand-side regulation that stabilizes the flow of product to market through promotion.

(f) Analysis of the impact of federal, state and foreign regulation.

(g) Cooperative crisis resolution that impacts public health and safety and the continued stability of the industry.

(h) Participation with state and federal agencies in negotiating with other governments relating to market access issues such as phytosanitary issues, shipping protocols, crop protection residues, packaging, labeling, and other issues raised by countries imposing trade barriers on the import of agricultural and seafood products into their markets.

(i) Industry self-regulation to establish and maintain grade, size, and maturity standards and to stabilize the flow of product to market.

SEC. 3. Section 63901.4 is added to the Food and Agricultural Code, to read:

63901.4. The Legislature further finds and declares that mandated cooperative efforts engaged in by the commissions and councils have proven to be effective methods to avoid economic waste and maintain stable agricultural markets. These cooperative efforts are intended to work subject to, and together with, the constraints placed on the agricultural industry by state and federal statutes and regulations and international restrictions.

SEC. 4. Section 63902 of the Food and Agricultural Code is amended to read:

63902. In addition to any specific provisions regarding grievance procedures, and consistent with the nature of the commissions and councils established pursuant to Part 2 (commencing with Section 64001) and the desire to resolve conflicts in the most timely and cost-effective manner, any person subject to this division shall file a grievance with the appropriate commission or council, and exhaust all administrative remedies prior to the initiation of any litigation based on a claim, express or implied, that the activities undertaken by the commission or council do not directly or materially advance the interests of the State of California as set forth in this part.

SEC. 5. Section 63905 is added to the Food and Agricultural Code, to read:

63905. (a) Any commission or council may petition the secretary to adopt and administer any activity authorized pursuant to the California Marketing Act of 1937 (Chapter 1 (commencing with Section 58601) of Part 2 of Division 21) relating to the commodity that is covered by any commission or council. Adoption and administration of the activity by any commission or council shall be in accordance with the act.

(b) As determined by the secretary, the governing body of the commission or council may serve as the advisory board with respect to any activity recommended and approved pursuant to this section.

CHAPTER 511

An act relating to the Klamath River Water Crisis Economic Assistance and Mitigation Program, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. The Legislature finds and declares the following:

(a) (1) Conditions of extreme water shortage and drought exist within the Counties of Siskiyou and Modoc caused by reductions in water delivery from the Klamath Project and a 69 percent decrease in precipitation and snow pack this year.

(2) The extreme water shortage and drought situation constitutes a crisis of extreme proportions, and, therefore, the boards of supervisors of those counties have proclaimed local emergencies, and the Governor has proclaimed a state of emergency in those counties.

(3) The overall economic viability of the region is dependent upon the implementation of a broad range of short-term and long-term solutions to mitigate the impacts of the Klamath River water crisis.

(b) This act establishes the Klamath River Water Crisis Economic Assistance and Mitigation Program.

SEC. 2. (a) Notwithstanding any other provision of law, the eight million dollars ($8,000,000) appropriated pursuant to Item 2920-102-0001 of Section 2.00 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001) shall be allocated by the Controller to the Office of Emergency Services for the Klamath River Water Crisis Economic Assistance and Mitigation Program, in accordance with the following schedule:

(1) Three million dollars ($3,000,000) to the Tulelake Irrigation District to offset the operations and maintenance costs of the Tulelake Irrigation District system.

(2) (A) Five hundred thousand dollars ($500,000) to the California Waterfowl Association to buy uncut marginal grain crops thereby leaving the grain standing and seeding fall grain benefiting waterfowl.

(B) The California Waterfowl Association shall, as a condition of receiving funds pursuant to this paragraph, implement the purchase program, including providing sign-ups, verifications, timely producer payments, and all necessary reports.

(3) Two hundred thousand dollars ($200,000) to the Siskiyou Department of Agriculture to provide funds for the Siskiyou-Modoc Weed Control Program in the Klamath Basin.

(4) Five hundred thousand dollars ($500,000) to the Siskiyou County Department of Agriculture to provide feed to livestock.

(5) Six hundred fifty thousand dollars ($650,000) to the Tulelake Community Partnership. Of the money made available pursuant to this paragraph, one hundred fifty thousand dollars ($150,000) shall be for the operation of the Tulelake Community/Youth Center, which provides community activities and after-school programs, and five hundred thousand dollars ($500,000) shall be for the construction of the Tulelake Community/Youth Center.

(6) Six hundred thousand dollars ($600,000) to the City of Tulelake to improve the water quality of the city water system.

(7) Two million five hundred thousand dollars ($2,500,000) to the Tulelake-Newall Local Assistance Center, for expenditure as follows:

(A) (i) Nine hundred thousand dollars ($900,000) to provide direct assistance block grants to families impacted by the drought in the Tulelake area.

(ii) An applicant for a grant pursuant to this subparagraph shall demonstrate proof of residency in the affected area and provide a verifiable declaration of need in accordance with requirements prescribed by that center.

(B) (i) One million six hundred thousand dollars ($1,600,000) to provide 150 public service employment jobs for a period of six months.

(ii) An applicant for employment pursuant to this subparagraph shall demonstrate proof of residency in the affected area and provide a verifiable declaration of need in accordance with requirements prescribed by that center.

(8) Fifty thousand dollars ($50,000), allocated as determined to be appropriate by the Office of Emergency Services, to the Counties of Modoc and Siskiyou to establish crisis counseling programs.

(b) The Office of Emergency Services, with the approval of the Department of Finance, may transfer any unencumbered funds

anticipated or remaining in any program or activity funded under this section to any other program or activity funded under this section.

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 remedy the severity and address the consequences of the conditions of extreme water shortage and drought that exists within the Counties of Siskiyou and Modoc, and to establish and carry out the Klamath River Water Crisis Economic Assistance and Mitigation Program, as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 512

An act to amend Section 14556.26 of the Government Code, to amend Section 130265 of the Public Utilities Code, and to amend Section 182.6, 182.7, and 182.8 of the Streets and Highways Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 4, 2001.]

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

SECTION 1. Section 14556.26 of the Government Code is amended to read:

14556.26. (a) Except as provided in subdivision (b), a regional or local agency receiving an allocation from this program shall certify, by resolution of its governing board, before final execution of the cooperative agreement, that it will sustain its level of expenditures for transportation purposes at a level that is consistent with the average of its annual expenditures during the 1997–98, 1998–99, and 1999–2000 fiscal years, including funds reserved for transportation purposes, during the fiscal years that the allocation provided under this chapter is available for use. The certification is subject to audit by the state.

(b) A transportation entity that imposes a retail transactions and use tax in accordance with an ordinance adopted pursuant to Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code for transportation purposes, and receives an allocation under this program, shall certify, by resolution of its governing board, before final execution of the cooperative agreement, that during the

fiscal years that the allocation provided under this chapter is available for use, the transportation entity will expend the allocated funds for the originally programmed purpose, and that the entity will not use for other than transportation capital purposes any capital funds that were programmed, planned, or approved for transportation capital purposes on or before the effective date of the cooperative agreement. The certification is subject to audit by the state.

SEC. 2. Section 130265 of the Public Utilities Code is amended to read:

130265. In 1990, the Los Angeles County Transportation Commission adopted an approved San Fernando Valley rail rapid transit route and plan as described in the Findings and Mitigation Monitoring Program adopted by the Los Angeles County Transportation Commission on February 28, 1990, as an extension of metro rail or advanced technology transit, other than light rail, that is a deep bore subway through residential areas, unless modified through a subsequent state or federal environmental review process. Therefore, the following apply within the right-of-way of the Burbank Branch line of the Southern Pacific Railroad:

(a) In the area between the western curb of Hazeltine Avenue and a line parallel to and 50 feet west of the western edge of the Hollywood freeway, there may not be constructed any exclusive public mass transit rail guideway, rail rapid transit or light rail system, or other track, other than as a subway system that is covered and below grade.

(b) In the area described in subdivision (c), no station may be constructed, other than a station where the main entrance is located on property that is currently part of the Los Angeles Valley College campus or on that portion of the existing railroad right-of-way located north of Burbank Boulevard and east of Fulton Avenue.

(c) In the area below Tujunga Wash and at least one mile to the east and west of Tujunga Wash, there may not be constructed any exclusive public mass transit rail guideway, rail rapid transit or light rail system, or other track, other than as a subway using boring technology as a deep bore subway located at least 25 feet below ground, measured from the existing ground level to the top of the tunnel.

(d) This section is not intended to mandate the selection by the Los Angeles County Transportation Commission of any transit route or the construction of any route configuration or alignment, or to prevent consideration by that commission of any monorail or other advanced technology option on any alternative route, but this section is intended solely to define statutorily the route configuration and alignment limitations adopted locally by the Los Angeles County Transportation Commission on February 28, 1990.

SEC. 3. Section 182.6 of the Streets and Highways Code is amended to read:

182.6. (a) Notwithstanding Sections 182 and 182.5, Sections 188, 188.8, and 825 do not apply to the expenditure of an amount of federal funds equal to the amount of federal funds apportioned to the state pursuant to that portion of subsection (b)(3) of Section 104, subsections (a) and (c) of Section 157, and subsection (d) of Section 160 of Title 23 of the United States Code that is allocated within the state subject to subsection (d)(3) of Section 133 of that code. These funds shall be known as the regional surface transportation program funds. The department, the transportation planning agencies, the county transportation commissions, and the metropolitan planning organizations may do all things necessary in their jurisdictions to secure and expend those federal funds in accordance with the intent of federal law and this chapter.

(b) The regional surface transportation program funds shall be apportioned by the department to the metropolitan planning organizations designated pursuant to Section 134 of Title 23 of the United States Code and, in areas where none has been designated, to the transportation planning agency designated pursuant to Section 29532 of the Government Code. The funds shall be apportioned in the manner and in accordance with the formula set forth in subsection (d)(3) of Section 133 of Title 23 of the United States Code, except that the apportionment shall be among all areas of the state. Funds apportioned under this subdivision shall remain available for three federal fiscal years, including the federal fiscal year apportioned.

(c) Where county transportation commissions have been created by Division 12 (commencing with Section 130000) of the Public Utilities Code, all regional surface transportation program funds shall be further apportioned by the metropolitan planning organization to the county transportation commission on the basis of relative population.

In the Monterey Bay region, all regional surface transportation program funds shall be further apportioned, on the basis of relative population, by the metropolitan planning organization to the regional transportation planning agencies designated under subdivision (b) of Section 29532 of the Government Code.

(d) The applicable metropolitan planning organization, county transportation commission, or transportation planning agency shall annually apportion the regional surface transportation program funds for projects in each county, as follows:

(1) An amount equal to the amount apportioned under the federal-aid urban program in federal fiscal year 1990–91 adjusted for population. The adjustment for population shall be based on the population determined in the 1990 federal census except that no county shall be

apportioned less than 110 percent of the apportionment received in the 1990–91 fiscal year. These funds shall be apportioned for projects implemented by cities, counties, and other transportation agencies on a fair and equitable basis based upon an annually updated five-year average of allocations. Projects shall be nominated by cities, counties, transit operators, and other public transportation agencies through a process that directly involves local government representatives.

(2) An amount not less than 110 percent of the amount that the county was apportioned under the federal-aid secondary program in federal fiscal year 1990–91, for use by that county.

(e) The department shall notify each metropolitan planning organization, county transportation commission, and transportation planning agency receiving an apportionment under this section, as soon as possible each year, of the amount of obligation authority estimated to be available for program purposes.

The metropolitan planning organization and transportation planning agency, in cooperation with the department, congestion management agencies, cities, counties, and affected transit operators, shall select and program projects in conformance with federal law. The metropolitan planning organization and transportation planning agency shall submit its transportation improvement program prepared pursuant to Section 134 of Title 23 of the United States Code to the department for incorporation into the state transportation improvement program not later than August 1 of each even-numbered year beginning in 1994.

(f) Not later than July 1 of each year, the metropolitan planning organizations, and the regional transportation planning agencies, receiving obligational authority under this article shall notify the department of the projected amount of obligational authority that each entity intends to use during the remainder of the current federal fiscal year, including, but not limited to, a list of projects that will be obligated by the end of the current federal fiscal year. Any federal obligational authority that will not be used shall be redistributed by the department to other projects in a manner that ensures that the state will continue to compete for and receive increased obligational authority during the federal redistribution of obligational authority. If the department does not have sufficient federal apportionments to fully use excess obligational authority, the metropolitan planning organizations or regional transportation planning agencies relinquishing obligational authority shall make sufficient apportionments available to the department to fund alternate projects, when practical, within the geographical areas relinquishing the obligational authority. Notwithstanding this subdivision, the department shall comply with subsections (d)(3) and (f) of Section 133 of Title 23 of the United States Code.

(g) A regional transportation planning agency that is not designated as, nor represented by, a metropolitan planning organization with an urbanized area population greater than 200,000 pursuant to the 1990 federal census may exchange its annual apportionment received pursuant to this section on a dollar-for-dollar basis for nonfederal State Highway Account funds, which shall be apportioned in accordance with subdivision (d).

(h) (1) If a regional transportation planning agency described in subdivision (g) does not elect to exchange its annual apportionment, a county located within the boundaries of that regional transportation planning agency may elect to exchange its annual apportionment received pursuant to paragraph (2) of subdivision (d) for nonfederal State Highway Account funds.

(2) A county not included in a regional transportation planning agency described in subdivision (g), whose apportionment pursuant to paragraph (2) of subdivision (d) was less than 1 percent of the total amount apportioned to all counties in the state, may exchange its apportionment for nonfederal State Highway Account funds. If the apportionment to the county was more than $3^1/_2$ percent of the total apportioned to all counties in the state, it may exchange that portion of its apportionment in excess of $3^1/_2$ percent for nonfederal State Highway Account funds. Exchange funds received by a county pursuant to this section may be used for any transportation purpose.

(i) The department shall be responsible for closely monitoring the use of federal transportation funds, including regional surface transportation program funds to assure full and timely use. The department shall prepare a quarterly report for submission to the commission regarding the progress in use of all federal transportation funds. The department shall notify the commission and the appropriate implementation agency whenever there is a failure to use federal funds within the three-year apportionment period established under subdivision (b).

(j) The department shall provide written notice to implementing agencies when there is one year remaining within the three-year apportionment period established under subdivision (b) of this section.

(k) Within six months of the date of notification required under subdivision (j), the implementing agency shall provide to the department a plan to obligate funds that includes, but need not be limited to, a list of projects and milestones.

(*l*) If the implementing agency has not met the milestones established in the implementation plan required under subdivision (k), prior to the end of the three-year apportionment period established under subdivision (b), the commission shall redirect those funds for use on other transportation projects in the state.

(m) Notwithstanding subdivisions (g) and (h), regional surface transportation program funds available under this section exchanged pursuant to Section 182.8 may be loaned to and expended by the department. The department shall repay from the State Highway Account to the Traffic Congestion Relief Fund all funds received as federal reimbursements for funds exchanged under Section 182.8 as they are received from the Federal Highway Administration, except that those repayments are not required to be made more frequently than on a quarterly basis.

SEC. 4. Section 182.7 of the Streets and Highways Code is amended to read:

182.7. (a) Notwithstanding Sections 182 and 182.5, Sections 188, 188.8, and 825 do not apply to the expenditure of an amount of federal funds equal to the amount of federal funds apportioned to the state pursuant to subsection (b)(2) of Section 104 of Title 23 of the United States Code. These funds shall be known as the congestion mitigation and air quality program funds and shall be expended in accordance with Section 19 of Title 3 of the United States Code. The department, the transportation planning agencies, and the metropolitan planning organizations may do all things necessary in their jurisdictions to secure and expend those federal funds in accordance with the intent of federal law and this chapter.

(b) The congestion mitigation and air quality program funds, including any funds to which subsection (c) of Section 110 of Title 23 of the United States Code, as added by subdivision (a) of Section 1310 of Public Law 105-178, applies, shall be apportioned by the department to the metropolitan planning organizations designated pursuant to Section 134 of Title 23 of the United States Code and, in areas where none has been designated, to the transportation planning agency established by Section 29532 of the Government Code. The funds shall be apportioned to metropolitan planning organizations and transportation planning agencies responsible for air quality conformity determinations in federally designated air quality nonattainment and maintenance areas within the state in the manner and in accordance with the formula set forth in subsection (b)(2) of Section 104 of Title 23 of the United States Code. Funds apportioned under this subdivision shall remain available for three federal fiscal years, including the federal fiscal year apportioned.

(c) Notwithstanding subdivision (b), where county transportation commissions have been created by Division 12 (commencing with Section 130000) of the Public Utilities Code, all congestion mitigation and air quality program funds shall be further apportioned by the metropolitan planning organization to the county transportation commission on the basis of relative population within the federally

designated air quality nonattainment and maintenance areas after first apportioning to the nonattainment and maintenance areas in the manner and in accordance with the formula set forth in subsection (b)(2) of Section 104 of Title 23 of the United States Code.

In the Monterey Bay region, all congestion mitigation and air quality improvement program funds shall be further apportioned, on the basis of relative population, by the metropolitan planning organization to the regional transportation planning agencies designated under subdivision (b) of Section 29532 of the Government Code.

(d) The department shall notify each metropolitan planning organization, transportation planning agency, and county transportation commission receiving an apportionment under this section, as soon as possible each year, of the amount of obligational authority estimated to be available for expenditure from the federal apportionment. The metropolitan planning organizations, transportation planning agencies, and county transportation commissions, in cooperation with the department, congestion management agencies, cities and counties, and affected transit operators, shall select and program projects in conformance with federal law. Each metropolitan planning organization and transportation planning agency shall, not later than August 1 of each even-numbered year beginning in 1994, submit its transportation improvement program prepared pursuant to Section 134 of Title 23 of the United States Code to the department for incorporation into the state transportation improvement program.

(e) Not later than July 1 of each year, the metropolitan planning organizations and the regional transportation planning agencies receiving obligational authority under this section, shall notify the department of the projected amount of obligational authority that each entity intends to use during the remainder of the current federal fiscal year, including, but not limited to, a list of projects that will use the obligational authority. Any federal obligational authority that will not be used shall be redistributed by the department to other projects in a manner that ensures that the state will continue to compete for and receive increased obligational authority during the federal redistribution of obligational authority. If the department does not have sufficient federal apportionments to fully use excess obligational authority, the metropolitan planning organization or transportation planning agency relinquishing obligational authority shall make sufficient apportionments available to the department to fund alternate projects, when practical, within the geographical areas relinquishing the obligational authority. Notwithstanding this subdivision, the department shall comply with subsection (f) of Section 133 of Title 23 of the United States Code.

(f) The department shall be responsible for closely monitoring the use of federal transportation funds, including congestion management and air quality funds to assure full and timely use. The department shall prepare a quarterly report for submission to the commission regarding the progress in use of all federal transportation funds. The department shall notify the commission and the appropriate implementation agency whenever there is a failure to use federal funds within the three-year apportionment period established under subdivision (b).

(g) The department shall provide written notice to implementing agencies when there is one year remaining within the three-year apportionment period established under subdivision (b) of this section.

(h) Within six months of the date of notification required under subdivision (g), the implementing agency shall provide to the department a plan to obligate funds that includes, but need not be limited to, a list of projects and milestones.

(i) If the implementing agency has not met the milestones established in the implementation plan required under subdivision (h) above, prior to the end of the three-year apportionment period established under subdivision (b), the commission shall redirect those funds for use on other transportation projects in the state.

(j) Congestion mitigation and air quality program funds available under this section exchanged pursuant to Section 182.8 may be loaned to and expended by the department. The department shall repay from the State Highway Account to the Traffic Congestion Relief Fund all funds received as federal reimbursements for funds exchanged under Section 182.8 as they are received from the Federal Highway Administration, except that those repayments are not required to be made more frequently than on a quarterly basis.

SEC. 4.5. Section 182.7 of the Streets and Highways Code is amended to read:

182.7. (a) Notwithstanding Sections 182 and 182.5, Sections 188, 188.8, and 825 do not apply to the expenditure of an amount of federal funds equal to the amount of federal funds apportioned to the state pursuant to subsection (b)(2) of Section 104 of Title 23 of the United States Code. These funds shall be known as the congestion mitigation and air quality program funds and shall be expended in accordance with Section 149 of Title 23 of the United States Code. The department, the transportation planning agencies, and the metropolitan planning organizations may do all things necessary in their jurisdictions to secure and expend those federal funds in accordance with the intent of federal law and this chapter.

(b) The congestion mitigation and air quality program funds, including any funds to which subsection (c) of Section 110 of Title 23 of the United States Code, as added by subdivision (a) of Section 1310

of Public Law 105-178, applies, shall be apportioned by the department to the metropolitan planning organizations designated pursuant to Section 134 of Title 23 of the United States Code and, in areas where none has been designated, to the transportation planning agency established by Section 29532 of the Government Code. The funds shall be apportioned to metropolitan planning organizations and transportation planning agencies responsible for air quality conformity determinations in federally designated air quality nonattainment and maintenance areas within the state in the manner and in accordance with the formula set forth in subsection (b)(2) of Section 104 of Title 23 of the United States Code. Funds apportioned under this subdivision shall remain available for three federal fiscal years, including the federal fiscal year apportioned.

(c) Notwithstanding subdivision (b), where county transportation commissions have been created by Division 12 (commencing with Section 130000) of the Public Utilities Code, all congestion mitigation and air quality program funds shall be further apportioned by the metropolitan planning organization to the county transportation commission on the basis of relative population within the federally designated air quality nonattainment and maintenance areas after first apportioning to the nonattainment and maintenance areas in the manner and in accordance with the formula set forth in subsection (b)(2) of Section 104 of Title 23 of the United States Code.

In the Monterey Bay region, all congestion mitigation and air quality improvement program funds shall be further apportioned, on the basis of relative population, by the metropolitan planning organization to the regional transportation planning agencies designated under subdivision (b) of Section 29532 of the Government Code.

(d) The department shall notify each metropolitan planning organization, transportation planning agency, and county transportation commission receiving an apportionment under this section, as soon as possible each year, of the amount of obligational authority estimated to be available for expenditure from the federal apportionment. The metropolitan planning organizations, transportation planning agencies, and county transportation commissions, in cooperation with the department, congestion management agencies, cities and counties, and affected transit operators, shall select and program projects in conformance with federal law. Each metropolitan planning organization and transportation planning agency shall, not later than August 1 of each even-numbered year beginning in 1994, submit its transportation improvement program prepared pursuant to Section 134 of Title 23 of the United States Code to the department for incorporation into the state transportation improvement program.

(e) Not later than July 1 of each year, the metropolitan planning organizations and the regional transportation planning agencies receiving obligational authority under this section, shall notify the department of the projected amount of obligational authority that each entity intends to use during the remainder of the current federal fiscal year, including, but not limited to, a list of projects that will use the obligational authority. Any federal obligational authority that will not be used shall be redistributed by the department to other projects in a manner that ensures that the state will continue to compete for and receive increased obligational authority during the federal redistribution of obligational authority. If the department does not have sufficient federal apportionments to fully use excess obligational authority, the metropolitan planning organization or transportation planning agency relinquishing obligational authority shall make sufficient apportionments available to the department to fund alternate projects, when practical, within the geographical areas relinquishing the obligational authority. Notwithstanding this subdivision, the department shall comply with subsection (f) of Section 133 of Title 23 of the United States Code.

(f) The department shall be responsible for closely monitoring the use of federal transportation funds, including congestion management and air quality funds to assure full and timely use. The department shall prepare a quarterly report for submission to the commission regarding the progress in use of all federal transportation funds. The department shall notify the commission and the appropriate implementation agency whenever there is a failure to use federal funds within the three-year apportionment period established under subdivision (b).

(g) The department shall provide written notice to implementing agencies when there is one year remaining within the three-year apportionment period established under subdivision (b) .

(h) Within six months of the date of notification required under subdivision (g), the implementing agency shall provide to the department a plan to obligate funds that includes, but need not be limited to, a list of projects and milestones.

(i) If the implementing agency has not met the milestones established in the implementation plan required under subdivision (h) , prior to the end of the three-year apportionment period established under subdivision (b), the commission shall redirect those funds for use on other transportation projects in the state.

(j) Congestion mitigation and air quality program funds available under this section exchanged pursuant to Section 182.8 may be loaned to and expended by the department. The department shall repay from the State Highway Account to the Traffic Congestion Relief Fund all funds received as federal reimbursements for funds exchanged under Section

182.8 as they are received from the Federal Highway Administration, except that those repayments are not required to be made more frequently than on a quarterly basis.

SEC. 5. Section 182.8 of the Streets and Highways Code is amended to read:

182.8. (a) It is the intent of the Legislature that this program help increase flexibility in the use of state and federal funding to complete transportation improvements. The ability to exchange certain federal funds for state funds may enhance that flexibility. However, it is the intent of the Legislature that the commission make these exchanges only if the exchanges do not compromise other state funded projects or activities.

(b) The commission shall propose guidelines and procedures to implement this section, hold a public hearing on the guidelines, and adopt the guidelines on or before February 1, 2001. The commission shall begin the exchange program on or before February 1, 2001, if it determines that funding is available for that purpose. The commission may amend its guidelines after holding a public hearing, but may not amend the guidelines between the time it notifies regional transportation planning agencies of the amount of state funds available for exchange and its approval of projects for exchange in any given year.

(c) On or before January 5 of each year, the department shall report to the commission the amounts apportioned as federal local assistance in the regional surface transportation and congestion mitigation and air quality programs for the year, the Federal Obligation Authority for the year, and the amount of federal funds it expects to be able to obligate for work on projects in all programs on or before September 30 of that year, and the commission, in cooperation with the department, shall determine the amount of state funds from the Traffic Congestion Relief Fund that can be made available for exchange under this section. If the release of federal apportionments and obligational authority is delayed beyond November 1 in any year, all the dates specified in this section shall be extended by an equivalent time, however, all federal funds exchanged shall be obligated on or before September 30 of the current federal fiscal year.

(d) The commission may exchange funds under this section if it determines all of the following:

(1) Adequate state funds are available to accomplish the exchange without putting at risk other transportation activities or projects needing state funds.

(2) Any exchange will be consistent with full implementation of the Traffic Congestion Relief Act of 2000.

(3) Federal funds received in exchange can be readily and effectively used on other projects or activities by the state during the federal fiscal year.

(e) After making the determinations set forth in subdivision (d) the commission may offer to exchange state funds from the Traffic Congestion Relief Fund for federal local assistance funds, subject to the limits imposed under this section. For the purpose of this section, ''federal local assistance'' funds means regional surface transportation program or congestion mitigation and air quality program apportionments received that federal fiscal year and apportioned as local assistance pursuant to Sections 182.6 and 182.7.

(f) Not later than February 1 of each year, the commission shall notify the regional transportation planning agencies of the amount of state funds available for exchange for federal local assistance funds for that year. The maximum amount of state funds to be exchanged may not exceed 50 percent of the total amount of federal regional surface transportation program and congestion mitigation and air quality program funds apportioned for the current fiscal year as local assistance pursuant to subdivision (b) of Section 182.6 and subdivision (b) of Section 182.7, exclusive of state funds that may be exchanged pursuant to subdivision (g) of Section 182.6, paragraphs (1) and (2) of subdivision (h) of Section 182.6, or Section 182.7. Federal funds exchanged under this program shall be available for projects identified by the commission as ready to obligate during determination of the amount available for exchange. The amount of exchange may not exceed the department's ability to obligate all federal funds during the current federal fiscal year. The commission may not exchange state funds for regional surface transportation program funds required to be spent for transportation enhancements. This section does not affect the amount of exchange under subdivision (g) of Sections 182.6, or paragraphs (1) and (2) of subdivision (h) of Section 182.6.

(g) Regional transportation planning agencies may submit applications for exchange of funds to the commission not later than March 15 of each year. Applications shall identify the proposed use for the exchange funds, including project descriptions, cost estimates, scopes of work, schedules for construction, schedules for expenditures, and any other information required by the commission. The commission may require a region to identify priorities among applications it submits.

(h) If the commission receives applications for more exchange funds than the amount of state funds available, the commission shall select projects for exchange up to the amount of state funds available. The commission shall explain the criteria it uses to select projects, which shall include, but are not limited to, all of the following:

(1) Removal of all federal funds from projects.

(2) Assessment of projects that would benefit most from removal of federal funding because of size, type, location, agency capability, features, or federal requirements.

(3) Approximate relative equity within the program among regions in receiving state exchange funds over a multiyear period.

(i) The commission may exchange state funds for federal local assistance funds with agencies requesting exchanges. Agencies wishing to exchange their federal funds shall provide apportionments and obligation authority at the same rate the Federal Highway Administration distributes obligation authority. Agencies exchanging federal funds shall receive funds equal to 90 percent of the obligation authority exchanged. The commission shall approve exchanges of funds not later than its second regularly scheduled meeting following March 15 each year.

(j) The commission shall determine an exchange payment schedule based on expenditure plans. The commission may suspend exchange payment schedules if it determines projects are not proceeding.

(k) For financial display and reporting purposes, obligational authority received pursuant to this section shall be reported as a revenue accrual in the Traffic Congestion Relief Fund in the year in which the exchange is approved under subdivision (i). Funds approved for exchange shall be accrued as expenditures in the year in which the exchange is approved. Notwithstanding Section 16362 of the Government Code, the department shall repay, on a quarterly basis, at most, from the State Highway Account to the Traffic Congestion Relief Fund all funds received as federal reimbursements for funds exchanged under this section as they are received from the Federal Highway Administration, except that those repayments are not required to be made more frequently than on a quarterly basis.

(*l*) State funds provided through an exchange under this section shall be encumbered within one year and expended within three years.

(m) Upon adoption of its implementing guidelines, the commission may consider requests for exchanges under this section.

(n) Regional and local agencies shall use state exchange funds only for projects or purposes for which the federal local assistance funds being exchanged were originally intended, and may not supplant local funds on projects in order that those local funds can subsequently be used for nontransportation purposes. The commission may require agencies to certify that they are meeting this requirement. Agencies not meeting this maintenance of effort requirement may not be allowed to participate in the next exchange cycle.

(o) The commission shall include a summary of exchanges made pursuant to this section in its annual report to the Governor and Legislature pursuant to Section 14556.36, including an assessment of

progress in implementing projects funded by exchanges, and discussion of issues and recommendations related to implementation of the exchange program.

(p) Not later than the effective date of the reauthorization of the federal surface transportation act, the commission shall submit a report to the Governor and the Legislature recommending any changes in the exchange program necessitated by that reauthorization.

SEC. 6. Section 4.5 of this bill incorporates amendments to Section 182.7 of the Streets and Highways Code proposed by both this bill and Assembly Bill 1706. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, but this bill becomes operative first, (2) each bill amends Section 182.7 of the Streets and Highways Code, and (3) this bill is enacted after Assembly Bill 1706, in which case Section 182.7 of the Streets and Highways Code, as amended by Section 4 of this bill, shall remain operative only until the operative date of Assembly Bill 1706, at which time Section 4.5 of this bill shall become operative.

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

In order to implement changes relating to funding of important transportation improvements as quickly as possible and to avoid delays in implementing transportation improvements, it is necessary that this act take effect immediately.

CHAPTER 513

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

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

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

(a) California's oak woodlands are a vital component of the state's heritage and enhance the natural scenic beauty for residents and visitors, enhance real property values, promote ecological balance, provide habitat for over 300 wildlife species, moderate temperature extremes, reduce soil erosion, sustain water quality, protect against severe

firestorm conditions during a wildland fire, and aid with nutrient cycling.

(b) Throughout California's coastal counties tanoaks (Lithocarpus densiflorus), coast live oaks (Quercus agrifolia), and black oaks (Quercus kelloggii) are currently dying in large numbers from a condition known as ''sudden oak death.''

(c) Sudden oak death was first seen on tanoak in Mill Valley (Marin County) in 1995. Since then, it has been detected as far north as Sonoma County and as far south as Monterey County, with sudden oak death also confirmed in the Counties of Napa, San Mateo, and Santa Cruz. Scientists do not know whether this dieback will be limited to coastal oaks or whether sudden oak death has the potential to spread to other regions of California, such as the Central Valley and the foothills of the Sierra Nevada Mountains.

(d) The unprecedented level of dieback of tanoak, coast live oak, and black oak poses several immediate and long-term environmental and public safety threats, which include all of the following:

(1) Dead and dying oaks have worsened the already severe fire hazard conditions in both wildland and developed hillside areas.

(2) Many wildlife species depend on these major acorn-bearing trees for food, shelter, and habitat.

(3) Oaks are highly valued trees in an urban setting, providing beauty, shade, and property value to homes, and the loss of these oaks is both aesthetically and financially devastating.

(e) The cause of sudden oak death, a fungus known as Phytophthora, has only recently been determined. In many cases, the fungus weakens the oak and leaves the tree vulnerable to oak beetles.

(f) There is currently no known cure for trees with symptoms of sudden oak death. While there are treatments that should help landscape and urban-setting oaks resist the attack of Phytophthora or to fight off the resulting infestations, there is currently no feasible treatment for oaks in a woodland setting.

(g) It is too late for thousands of California's dead or dying oak trees, thus requiring a coordinated program to identify, remove, and appropriately dispose of these trees from landscapes, urban settings, and woodlands in order to protect public safety and real property values from an increased threat of wildfire. State, federal, local, and private sector expertise and fiscal resources are urgently needed to ensure that these thousands of dead or dying oaks, and those oaks that will die over the next few years, are identified, removed, and appropriately disposed of before they become a hazard to public health and the environment.

(h) State, federal, local, and private sector expertise and fiscal resources need to be effectively utilized to find a cure for sudden oak death or treatments to prevent this condition from occurring in the first

place, and to protect existing oaks that have not yet been infected by the fungus.

(i) A program should be established within the Resources Agency and overseen by the State Board of Forestry and Fire Protection to combat sudden oak death and lessen or eliminate the negative impact of the fungus. Funding is necessary to quickly and adequately address this situation, to ultimately find a cure for sudden oak death, and to ensure that all actions necessary are taken to protect the public safety and environment.

SEC. 2. (a) (1) From the funds appropriated by Items 3540-001-0001 and 3540-001-0140 of Section 2.00 of the Budget Act of 2001, to develop and implement measures designed to prevent, control, and manage the condition known as ''sudden oak death,'' and to perform control work on public and private lands within zones where sudden oak death is occurring, as determined by the State Board of Forestry and Fire Protection, the Department of Forestry and Fire Protection shall allocate the sum of three million five hundred eighty-six thousand dollars ($3,586,000) for the purposes specified in this section.

(2) The department shall use the funds allocated pursuant to this subdivision to take various actions to control the spread of the Phytophthora fungus, to find effective treatments to prevent or eliminate sudden oak death, and to perform, or assist local agencies and private property owners to perform, identification, removal, and appropriate disposal of oak trees that have expired due to sudden oak death.

(3) The funds allocated in this subdivision shall be further allocated as follows:

(A) Four hundred forty thousand dollars ($440,000) for sudden oak death monitoring activities including, but not necessarily limited to, open-space surveys, roadside surveys, aerial surveys, monitoring technique workshops, development of baseline information on the distribution, condition, and mortality rates of oaks in California, and maintaining an up-to-date geographic information system database.

(B) One million seven hundred ninety-six thousand dollars ($1,796,000) for sudden oak death management activities, including, but not necessarily limited to, hazard tree assessment, grants to counties for hazard tree removal pursuant to the process established in subdivision (b), assessment and management of restoration and mitigation options, establishment of demonstration management projects, including green waste treatment facilities in two counties selected by the State Board of Forestry and Fire Protection, and grants to counties for oak tree restoration pursuant to the process established in subdivision (c).

(C) Four hundred eighty thousand dollars ($480,000) for research activities, including, but not necessarily limited to, research on forest

pathology and Phytophthora ecology, forest insects associated with oak decline, urban forestry and arboriculture, forest ecology, fire management and silviculture, and landscape ecology, epidemiology, and monitoring techniques.

(D) Two hundred twenty-one thousand dollars ($221,000) for education activities, including, but not necessarily limited to, support for two education project coordinators, web site design and maintenance, and development and distribution of education materials on sudden oak death for homeowners, arborists, urban foresters, park managers, public works personnel, utility crews, recreationists, nursery workers, landscapers, naturists, and firefighting personnel.

(E) Four hundred six thousand dollars ($406,000) for regulation activities, including, but not necessarily limited to, nursery surveys and other regulation enforcement activities, diagnostic services, and other public agency coordination efforts.

(F) Two hundred forty-three thousand dollars ($243,000) for administrative activities necessary to oversee the activities listed in subparagraphs (A) to (F), inclusive.

(b) The State Board of Forestry and Fire Protection shall grant a portion of the funds allocated pursuant to subparagraph (B) of paragraph (3) of subdivision (a) to impacted counties for the removal of trees that have died or that are dying as a result of sudden oak death. An impacted county may apply to the board for these funds, and shall provide the board with an action plan for removal and disposition of affected trees within its jurisdiction. The board shall approve or deny an affected county's action plan in a timely manner. If the board approves the action plan of an affected county, the board may award a grant to that county. The board shall consider the recommendations of the California Oak Mortality Task Force prior to approving or denying any county action plan, and prior to making any grant award, under this subdivision.

(c) The State Board of Forestry and Fire Protection shall grant a portion of the funds allocated pursuant to subparagraph (B) of paragraph (3) of subdivision (a) to impacted counties for activities designed to restore oak trees in areas that have been impacted by sudden oak death. An impacted county may apply to the board for these funds, and provide the board with an action plan for restoration of affected trees within its jurisdiction. The board shall approve or deny an affected county's action plan in a timely manner. If the board approves the action plan of an affected county, the board may award a grant to that county. The board shall consider the recommendations of the California Oak Mortality Task Force prior to approving or denying any county action plan, and prior to making any grant award, under this subdivision.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

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

In order to provide funding, at the earliest possible time, to prevent, control, and manage the rapidly spreading condition known as ''sudden oak death,'' it is necessary that this act take effect immediately.

CHAPTER 514

An act to add Article 6 (commencing with Section 79210) to Chapter 9 of Part 48 of the Education Code, relating to community colleges, and making an appropriation therefor.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Article 6 (commencing with Section 79210) is added to Chapter 9 of Part 48 of the Education Code, to read:

Article 6. Grants for Worksite-Based Training Programs

79210. (a) The office of the Chancellor of the California Community Colleges shall award grants to community college districts for the purpose of developing curricula and pilot programs that provide training to licensed nurses, including, but not necessarily limited to, training in the following nursing specialty areas:

(1) Critical care.
(2) Emergency.
(3) Obstetrics.
(4) Pediatrics.
(5) Neonatal intensive care.
(6) Operating room.

(b) A grant application shall include all of the following:

(1) Demonstration that a shortage of trained nurses in the areas listed in subdivision (a) exists in the region served by the applicant and a description of the manner in which the proposed program would reduce that shortage.

(2) Identification of hospital partners that have agreed to participate in the development of curricula and pilot programs. Participation by hospital partners shall include a one-to-one match in the form of any one or combination of the following:

(A) Direct financial support.

(B) Tuition, fee, or other reimbursement of students.

(C) Involvement of salaried nurse mentors, clinical nurse specialists, or other specialty prepared staff.

(D) Provision of paid clinical experiences for program participants.

(E) Use of equipment for training purposes.

(c) The office of the Chancellor of the California Community Colleges shall verify the grant agreement between local community college districts and their hospital partners, including the specific form of the one-to-one matching contribution described in paragraph (2) of subdivision (b).

SEC. 2. (a) The sum of five million dollars ($5,000,000) is hereby appropriated from the General Fund to the Chancellor of the California Community Colleges for allocation as follows:

(1) One million dollars ($1,000,000) for grants to community college districts pursuant to Article 6 (commencing with Section 79210) of Chapter 9 of Part 48 of the Education Code. If there are more programs eligible to receive grants than there is funding available for the grants, the chancellor shall prorate the funding per grant. Nothing in this paragraph precludes prioritizing the program proposals pursuant to the criteria specified in subdivision (b) of Section 79210.

(2) Four million dollars ($4,000,000) in augmentation of Schedule (3) of Item 6870-101-0001 of Section 2.00 of the Budget Act of 2001. These funds shall be used to provide for enrollment growth in community college nursing programs.

(b) For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the amounts allocated pursuant to this section shall be deemed to be ''General Fund revenues appropriated to community college districts,'' as defined in subdivision (d) of Section 41202 of the Education Code, and shall be included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202 of the Education Code, for the fiscal year for which they are allocated.

CHAPTER 515

An act relating to the California Military Museum, and making an appropriation therefor.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

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

(1) In 1998, the Legislature enacted a grant, through the California Arts Council, to the California Military Museum to fund the California Military History Educational Project, in conjunction with the University of California, Los Angeles, and the School of Education of the California State University, Los Angeles.

(2) The California Military History Educational Project was established to develop a military history educational program that would meet all relevant state elementary and secondary educational standards and requirements for grades in which California history is taught.

(3) California has the nation's largest population of World War II veterans and military retirees.

(4) However, the population of the ''Greatest Generation'' is rapidly declining, and will drop dramatically in the next 10 years.

(5) In this time of relative peace and prosperity, many of California's elementary and secondary school pupils are unaware of the sacrifices made by the World War II generation, and the above-mentioned organizations have launched the World War II Oral History Program as a means of capturing the stories of these Californians.

(6) It is in the best interest of all Californians and the nation that the stories of the World War II generation be gathered and preserved for posterity before it is too late, and that these heroic stories be integrated into the California curriculum for those grades in which California history is taught.

(b) Therefore, it is the intent of the Legislature that one hundred twenty-five thousand dollars ($125,000) be appropriated for this worthy effort.

SEC. 2. The sum of one hundred twenty-five thousand dollars ($125,000) is appropriated from the General Fund to the California Arts Council for allocation to the California Military Museum for the continued operation of the World War II Oral History Program and coordination of this program with the California Center for Military History of the California State Military Reserve. The funds appropriated by this section shall be used solely for the continued operation of the World War II Oral History Program. None of the funds appropriated by this section shall be used for administrative costs of the California Military Museum.

CHAPTER 516

An act to amend Section 8650 of, and to add Section 8650.5 to, the Health and Safety Code, relating to family interment plots.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 8650 of the Health and Safety Code is amended to read:

8650. (a) Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner, the plot shall become the family plot of the owner.

(b) If the owner dies without making disposition of the plot either in his or her will by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, any unoccupied portions of the plot shall pass according to the laws of intestate succession as set forth in Sections 6400 to 6413, inclusive, of the Probate Code.

(c) As of January 1, 2002, any unoccupied portions of a family plot that became inalienable pursuant to this section as it read on December 31, 2001, shall no longer be inalienable and shall pass according to the laws of intestate succession as set forth in Sections 6400 to 6413, inclusive, of the Probate Code. No sale, transfer, or donation of any unused portion of a family plot made alienable under this subdivision shall be made unless all persons entitled to interment in the family plot under Sections 8651 and 8652 are deceased or have expressly waived in writing the right to be interred in the family plot.

(d) The seller of a cemetery plot shall notify the buyer that unused portions of a family plot may pass through intestate succession unless written disposition is made by the buyer and may be sold, transferred, or donated by the buyer's heirs. The seller shall notify the buyer of the effect of a future transfer, sale, or donation of the unused portion of a family plot on any endowment for care or maintenance of the plot that the buyer may purchase in conjunction with the purchase of the cemetery plot.

SEC. 2. Section 8650.5 is added to the Health and Safety Code, to read:

8650.5. An affidavit executed by a person who is the owner of the plot by virtue of the laws of intestate succession or by his or her attorney-in-fact, setting forth the fact of the death of the owner, the absence of a disposition of the plot by the owner in his or her will by a

specific devise, the name of the person or persons who have rights to the plot under the intestate succession laws of the state, and the consent of that person or those persons to the sale of the plot by the cemetery authority, shall constitute complete authorization to the cemetery authority to permit any sale of the unoccupied portions of the plot.

CHAPTER 517

An act to amend Section 1108 of the Evidence Code, relating to evidence of prior sexual offenses.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 1108 of the Evidence Code is amended to read:

1108. (a) In a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to Section 352.

(b) In an action in which evidence is to be offered under this section, the people shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least 30 days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This section shall not be construed to limit the admission or consideration of evidence under any other section of this code.

(d) As used in this section, the following definitions shall apply:

(1) ''Sexual offense'' means a crime under the law of a state or of the United States that involved any of the following:

(A) Any conduct proscribed by Section 243.4, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.2, 288.5, or 289, or subdivision (b), (c), or (d) of Section 311.2 or Section 311.3, 311.4, 311.10, 311.11, 314, or 647.6, of the Penal Code.

(B) Contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person.

(C) Contact, without consent, between the genitals or anus of the defendant and any part of another person's body.

(D) Deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person.

(E) An attempt or conspiracy to engage in conduct described in this paragraph.

(2) ''Consent'' shall have the same meaning as provided in Section 261.6 of the Penal Code, except that it does not include consent which is legally ineffective because of the age, mental disorder, or developmental or physical disability of the victim.

CHAPTER 518

An act to amend Section 2313 of, and to add Sections 2190.5 and 2241.6 to, the Business and Professions Code, relating to medical practice.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. It is the intent of the Legislature that this act serve to broaden and update the knowledge base of all physicians related to the appropriate care and treatment of patients suffering from pain. For the past 20 years, medical journals have reported that physicians consistently fail to manage their patient's pain appropriately. These studies also consistently report that the single most important cause of this problem is lack of physician knowledge and awareness regarding appropriate pain management treatments. It is also the intent of the Legislature that this act serve to broaden and update all physicians' knowledge bases regarding appropriate care and treatment of terminally ill and dying patients. The Legislature intends that this act provide for the continuing education of all physicians on these two topics of medical care. In addition, the Legislature intends that physicians receive this continuing education as part of their current continuing education requirements, and that appropriate corresponding coursework be determined by existing Medical Board of California practice.

SEC. 2. Section 2190.5 is added to the Business and Professions Code, to read:

2190.5. (a) All physicians and surgeons shall complete a mandatory continuing education course in the subjects of pain management and the treatment of terminally ill and dying patients. For the purposes of this section, this course shall be a one-time requirement of 12 credit hours within the required minimum established by regulation, to be completed by December 31, 2006. All physicians licensed on and after January 1, 2002, shall complete this requirement

within four years of their initial license or by their second renewal date, whichever occurs first. The board may verify completion of this requirement on the renewal application form.

(b) By regulatory action the board may exempt physicians by practice status category from the requirement in subdivision (a) if the physician does not engage in direct patient care, does not provide patient consultations, or does not reside in the State of California.

(c) This section shall not apply to physicians practicing in pathology or radiology speciality areas.

SEC. 3. Section 2241.6 is added to the Business and Professions Code, to read:

2241.6. The Division of Medical Quality shall develop standards before June 1, 2002, to assure the competent review in cases concerning the management, including, but not limited to, the undertreatment, undermedication, and overmedication of a patient's pain. The division may consult with entities such as the American Pain Society, the American Academy of Pain Medicine, the California Society of Anesthesiologists, the California Chapter of the American College of Emergency Physicians, and any other medical entity specializing in pain control therapies to develop the standards utilizing, to the extent they are applicable, current authoritative clinical practice guidelines.

SEC. 4. Section 2313 of the Business and Professions Code is amended to read:

2313. The Division of Medical Quality shall report annually to the Legislature, no later than October 1 of each year, the following information:

(a) The total number of temporary restraining orders or interim suspension orders sought by the board or the division to enjoin licensees pursuant to Sections 125.7, 125.8 and 2311, the circumstances in each case that prompted the board or division to seek that injunctive relief, and whether a restraining order or interim suspension order was actually issued.

(b) The total number and types of actions for unprofessional conduct taken by the board or a division against licensees, the number and types of actions taken against licensees for unprofessional conduct related to prescribing drugs, narcotics, or other controlled substances, including those related to the undertreatment or undermedication of pain.

(c) Information relative to the performance of the division, including the following: number of consumer calls received; number of consumer calls or letters designated as discipline-related complaints; number of calls resulting in complaint forms being sent to complainants and number of forms returned; number of Section 805 reports by type; number of Section 801 and Section 803 reports; coroner reports received; number of convictions reported to the division; number of

criminal filings reported to the division; number of complaints and referrals closed, referred out, or resolved without discipline, respectively, prior to accusation; number of accusations filed and final disposition of accusations through the division and court review, respectively; final physician discipline by category; number of citations issued with fines and without fines and number of public reprimands issued; number of cases in process more than six months from receipt by the division of information concerning the relevant acts to the filing of an accusation; average and median time in processing complaints from original receipt of complaint by the division for all cases at each stage of discipline and court review, respectively; number of persons in diversion, and number successfully completing diversion programs and failing to do so, respectively; probation violation reports and probation revocation filings and dispositions; number of petitions for reinstatement and their dispositions; and caseloads of investigators for original cases and for probation cases, respectively.

''Action,'' for purposes of this section, includes proceedings brought by, or on behalf of, the division against licensees for unprofessional conduct that have not been finally adjudicated, as well as disciplinary actions taken against licensees.

CHAPTER 519

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

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

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

(a) California has a world-class postsecondary education delivery system, as envisioned and implemented pursuant to the Master Plan for Higher Education. The California Community Colleges and the California State University currently educate a total of over 1,800,000 Californians.

(b) The creation of new, cooperative, and cost-efficient models for the delivery of four-year degrees in high-demand transfer and employment areas is critical to the economic vitality of California.

(c) As California encounters the second ''tidal wave'' of college students, which is estimated to include 300,000 new students in the next decade, it is important to effectively utilize, through a cooperative

agreement, existing facilities at community college campuses where excess capacity exists.

(d) The development of cooperative educational delivery models to increase the number of graduates in high-demand employment areas for regions that are importing skilled workers from other countries is necessary and in the best interests of the state.

(e) It is vital that the State of California encourage cooperative educational partnerships that can be duplicated throughout California.

SEC. 2. (a) Notwithstanding any other provision of law, funding for the implementation and provision of baccalaureate degree programs through a cooperative educational partnership between Cañada College of the San Mateo Community College District and San Francisco State University of the California State University, shall be contingent upon an appropriation in the annual Budget Act.

(b) It is the intent of the Legislature that any funding for a cooperative educational partnership provided pursuant to subdivision (a) be appropriated to the Chancellor of the California Community Colleges, for allocation to the San Mateo Community College District for expenditure for baccalaureate degree programs on the Cañada campus, with lower-division courses offered by the faculty of Cañada College and upper-division courses offered by, and the degree awarded by, faculty of the San Francisco State University.

(c) Prior to the allocation by the Chancellor of the California Community Colleges of any moneys appropriated for the purposes of the act adding this section, an implementation plan shall be submitted to the chancellor by Cañada College that details expenditures for both of the following:

(1) Curriculum development and academic planning.

(2) Library materials, instructional equipment, and minor capital outlay necessary to upgrade laboratories and other academic facilities to support baccalaureate level students.

SEC. 3. (a) The Office of the Chancellor of the California Community Colleges, in cooperation with the Chancellor of the California State University, shall evaluate the program prescribed by Section 2 of the act adding this section. A preliminary report on the progress of this program shall be submitted, in writing, to the Legislature on or before January 1, 2003, and a final written report shall be submitted to the Legislature on or before January 1, 2004.

(b) The evaluation performed under this section shall examine various elements including, but not necessarily limited to, all of the following:

(1) The actual costs of modifying community college facilities for joint use and any offsetting savings that are derived from not having to

construct or modify facilities at campuses of the California State University.

(2) The number of students participating in the proposed collaboration and any measurable enhancement of time-to-degree.

(3) The local or regional employer support, measured by enhanced monetary, in-kind, or educational opportunities, such as student internships, scholarships, and career opportunities.

(4) Enhanced faculty cooperation that clearly articulates course responsibility at both the lower-division and upper-division faculty level to accommodate California State University programs.

(5) Recommendations regarding expansion of similar programs in other regions of the state.

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 this act to become operative in conjunction with the enactment of the Budget Act of 2001 and for the program established by this act to be completed prior to the commencement of fall 2001 classes, it is necessary that this act take effect immediately.

CHAPTER 520

An act to add and repeal Chapter 5 (commencing with Section 127630) of Part 2 of Division 107 of the Health and Safety Code, relating to health.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Chapter 5 (commencing with Section 127630) is added to Part 2 of Division 107 of the Health and Safety Code, to read:

CHAPTER 5. SPECIALITY CARE UNDERSERVED AREAS

127630. (a) The Legislature finds and declares all of the following:

(1) In various areas of the state, including many rural areas, there is a severe shortage in the availability of specialty care.

(2) This shortage of specialty care is especially burdensome on low-income persons who lack the resources to avail themselves of the

limited care that is available. Many of these persons are children who are seriously and chronically ill.

(3) Access to medical specialty care has declined steadily over the past 10 years as the ratio of physicians to the population in California has dropped below the national average.

(4) The Health Rights Hotline reports that approximately 10 percent of their calls are from patients reporting problems with specialty care, with some of the issues being the inability to find specialists and the long delays for appointments if specialists are found. These problems are particularly serious for children.

(5) The federal Health Resources and Services Administration has declared that there is a looming health care crisis in America, and that workforce shortages limit access to care.

(b) It is the intent of the Legislature to establish a program to bring specialists to patients who are in need of specialty care by subsidizing, through private funding, the cost of services, such as transportation and other costs related to the provision of that care.

(c) It is the intent of the Legislature that private gifts and grants be used for purposes of funding this chapter.

127631. The Office of Statewide Health Planning and Development, in consultation with the State Department of Health Services, shall establish a program under which funds would be provided to defray the cost of care provided by pediatric and adult specialty care providers in underserved areas to low-income persons. Care provided with funding under this part shall be consistent with current standards of practice for persons eligible for programs specified in Section 127633.

127632. (a) In cooperation with interested provider organizations, the office shall solicit, on a statewide basis, pediatric and adult specialty care providers to participate in this program on a voluntary basis.

(b) The office shall keep a registry of all pediatric and adult specialty care providers who agree to provide care to low-income persons in underserved areas.

127633. (a) To the extent that funding is available pursuant to subdivision (a) of Section 127634, the office shall reimburse any participating out-of-area provider for the cost of care rendered to low-income persons in underserved areas. The cost of care shall include all costs related to the provision of that care not fully reimbursed by the patient or by a responsible third party that includes, but is not limited to, private health insurance, the Medi-Cal program, the Child Health and Disability Prevention program, California Children's Services, and the Healthy Families Program. These costs shall include transportation, facility costs, medical supplies, appliances, and equipment. These costs

shall not include compensation for the professional services delivered by a participating provider.

(b) The office and the department shall be reimbursed from the Specialty Care Fund for costs incurred in implementing this chapter.

127634. (a) The Specialty Care Fund is hereby created in the State Treasury. Moneys in the fund shall be available for allocation upon appropriation by the Legislature.

(b) The fund shall be composed of all private gifts or grants made for purposes of this chapter, and any interest earned on any moneys deposited in the fund.

(c) The office shall contract with a private nonprofit entity that shall actively solicit private sources in order to acquire gifts and grants for the purpose of funding this chapter.

(d) This chapter shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

CHAPTER 521

An act to add Section 95.35 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 95.35 is added to the Revenue and Taxation Code, to read:

95.35. (a) The Legislature finds and declares that there is a significant and compelling state financial interest in the maintenance of an adequately funded system of property tax administration. This financial interest derives from the fact that 53 percent of all property tax revenues collected statewide serve to offset the General Fund obligation to fund K–12 schools, and extends not only to assessment and maintenance of the tax rolls, but also to all aspects of the system which include, but are not limited to, collection, apportionment, allocation, and processing and defending appeals. The Legislature further finds and declares that the combination of limitations on county revenue authority, increasing county financial obligations, and the shift of county property taxes to schools has created a financial disincentive for counties to adequately fund property tax administration. This disincentive is most clearly evidenced by the fact that counties, on average, receive 19

percent of statewide property tax revenues while they are obligated to pay an average of 73 percent of the costs of administration. The Legislature also finds and declares that the State-County Property Tax Loan Program contained in Section 95.31 was in recognition of the state's financial interest, and the success of that program has demonstrated the appropriateness of an ongoing commitment of state funds to reduce the burden of property tax administration on county finances. Therefore, it is the intent of the Legislature, in enacting this act, to establish a grant program known as the State-County Property Tax Administration Grant Program that will continue the success of the State-County Property Tax Loan Program and maintain the commitment to efficient property tax administration.

(b) Notwithstanding any other provision of law, in the 2002–03 fiscal year and each fiscal year thereafter to the 2006–07 fiscal year, inclusive, any county board of supervisors may, upon the recommendation of the assessor, adopt a resolution to elect to participate in the State-County Property Tax Administration Grant Program. Any resolution so adopted shall comply with the terms and conditions contained in paragraph (2) of subdivision (c). If adopted, a copy of the resolution shall be sent to the Department of Finance, which shall, upon approval, transmit a copy of the resolution to the Controller.

(c) (1) Any county electing to participate in this program may be qualified to receive a grant in an amount, up to and including, the applicable amount listed in paragraph (3). However, the grant eligibility of a county may be terminated at the discretion of the Department of Finance if a county does not meet the conditions specified in paragraph (4).

(2) The resolution to participate in this program shall include a detailed listing of the proposed uses by the county of the grant moneys, including, but not limited to:

(A) The proposed positions to be funded.

(B) Any increased automation costs.

(C) The specific tasks and functions that will be performed during the fiscal year with these funds.

(3) Upon transmittal of the electing resolution by the Department of Finance, the Controller shall, provided sufficient moneys have been appropriated by the Legislature for purposes of this section, provide a grant to the electing county for the applicable amount specified in the following schedule:

Jurisdiction	Amount
Alameda	$ 2,152,429
Alpine	3,124
Amador	80,865

Butte	381,956
Calaveras	109,897
Colusa	53,957
Contra Costa	2,022,088
Del Norte	36,203
El Dorado	302,795
Fresno	1,165,249
Glenn	59,197
Humboldt	210,806
Imperial	231,673
Inyo	100,080
Kern	1,211,318
Kings	138,653
Lake	117,376
Lassen	54,699
Los Angeles	13,451,670
Madera	212,991
Marin	790,490
Mariposa	46,476
Mendocino	160,435
Merced	298,004
Modoc	24,022
Mono	47,778
Monterey	795,819
Napa	366,020
Nevada	234,292
Orange	6,826,325
Placer	628,047
Plumas	80,606
Riverside	2,358,068
Sacramento	1,554,245
San Benito	90,408
San Bernardino	2,139,938
San Diego	5,413,943
San Francisco	1,013,332
San Joaquin	818,686
San Luis Obispo	736,288
San Mateo	2,220,001
Santa Barbara	926,817
Santa Clara	4,213,639

Santa Cruz	565,328
Shasta	342,399
Sierra	7,383
Siskiyou	91,164
Solano	469,207
Sonoma	1,035,049
Stanislaus	866,155
Sutter	147,436
Tehama	97,222
Trinity	24,913
Tulare	501,907
Tuolumne	126,067
Ventura	1,477,789
Yolo	278,309
Yuba	88,968

(4) The Department of Finance shall consider the following items in determining whether a county may continue to receive a grant under this section:

(A) The county's performance as indicated by the State Board of Equalization's sample survey required by Section 15640 of the Government Code.

(B) Any performance measures adopted by the California Assessors' Association, the California Association of Clerks and Elections Officials, the State Association of County Auditor-Controllers, and the California Association of County Treasurers and Tax Collectors.

(C) The county's reduction of backlogs of assessment appeals and declines in taxable value below adjusted base year value.

(D) The county's compliance with mandatory audits required by Section 469 or the county's delivery of tax bills as required by Section 2610.5.

(E) The county's reduction of backlogs of determinations regarding new construction, changes in ownership, and supplemental assessments.

(F) Any other measure, as determined by the Director of Finance and transmitted to a county prior to its receiving a grant.

(d) (1) Funds appropriated for purposes of this section shall be used to enhance the property tax administration system. Amounts provided to any county as a grant pursuant to this section may not be used to supplant the current level of county funding for property tax administration, exclusive of funds received pursuant to the predecessor State-County Property Tax Loan Program. In order to participate in the State-County Property Tax Administration Grant Program, a participating county shall maintain a base staffing, including contract

staff, and total funding level in the county assessor's office, independent of the grant proceeds provided pursuant to this section, equal to the levels in the 1994–95 fiscal year, exclusive of amounts provided to the assessor's office pursuant to Item 9100-102-001 of the Budget Act of 1994. However, in a county in which the 1994–95 fiscal year funding level for the assessor's office was higher than the 1993–94 fiscal year level, the 1993–94 fiscal year staffing and funding levels shall be considered the base year for purposes of this section. If a county was otherwise eligible but was unable to participate in the State-County Property Tax Loan Program in the 1995–96 fiscal year because it did not meet the funding level and staffing requirements of this paragraph, that county shall maintain a base staffing, including contract staff, and total funding level in the county assessor's office equal to the levels in the 1995–96 fiscal year.

(2) Prior to the assessor's recommendation for participation in the State-County Property Tax Administration Grant Program, the assessor shall consult with the county tax collector, and any other county agency directly involved in property tax administration, to develop an identifiable plan for the use of these funds during the period specified in the resolution by the board of supervisors. This plan shall be subject to modification and approval of the board of supervisors.

(e) In any fiscal year in which the assessor of a county elects not to participate in the grant program or submits to the board of supervisors a grant proposal that is less than the applicable amount specified in paragraph (3) of subdivision (c), any other department of that county that is responsible for the administration, allocation, or adjudication of property tax, as defined in Section 95.3, may submit to the board of supervisors an application for the remainder of the allowable grant amount set forth in paragraph (3) of subdivision (c). Any grant proposal submitted pursuant to this subdivision shall include the information specified in paragraph (2) of subdivision (c), and will be subject to the performance standards set forth in paragraph (4) of subdivision (b).

(f) If the funds appropriated by any Budget Act for the purposes set forth in this section exceed sixty million dollars ($60,000,000), the excess shall be allocated among participating counties in proportion to each county's applicable grant share listed in the schedule set forth in paragraph (3) of subdivision (c). Any additional funds allocated pursuant to this subdivision shall be transferred by the Controller to the boards of supervisors of participating counties at the same time as the transfer of funds pursuant to paragraph (3) of subdivision (c), and the funds transferred shall be available for allocation by the board of supervisors within the county only for the purposes of administration, allocation, or adjudication of property taxes, as defined in Section 95.3. Any county receiving funds pursuant to this subdivision shall be

required to comply with the same reporting requirements as those required for grant funds received pursuant to paragraph (3) of subdivision (c).

(g) A participating county may establish a tracking system whereby a work or function number is assigned to each appraisal or administrative activity. This tracking system should provide statistical data on the number of production units performed by the county and the positive and negative change in assessed value attributable to the activities performed by each employee.

(h) At the request of the Department of Finance, the State Board of Equalization shall assist the Department of Finance in evaluating grants made pursuant to this section.

(i) Notwithstanding Section 95.3, any funds provided to an eligible county pursuant to this section shall not result in any reduction of those county property tax administrative costs that are reimbursable pursuant to Section 95.3.

CHAPTER 522

An act to add Part 2.76 (commencing with Section 10780) to Division 6 of the Water Code, relating to water.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The importance of maintaining and monitoring a safe groundwater supply in this state for purposes of maintaining a healthy environment and a safe supply of drinking water cannot be minimized.

(b) The lack of information about groundwater contamination greatly impairs the ability of regulators and the public to protect and restore the state's groundwater basins.

(c) The Groundwater Quality Monitoring Act of 2001 enacted by this act is necessary to protect and restore groundwater as a valuable natural resource in California.

SEC. 2. Part 2.76 (commencing with Section 10780) is added to Division 6 of the Water Code, to read:

PART 2.76. GROUNDWATER QUALITY MONITORING

10780. This part shall be known and may be cited as the Groundwater Quality Monitoring Act of 2001.

10781. In order to improve comprehensive groundwater monitoring and increase the availability to the public of information about groundwater contamination, the state board, in consultation with other responsible agencies, as specified in this section, shall do all of the following:

(a) Integrate existing monitoring programs and design new program elements as necessary to establish a comprehensive monitoring program capable of assessing each groundwater basin in the state through direct and other statistically reliable sampling approaches. The interagency task force established pursuant to subdivision (b) shall determine the constituents to be included in the monitoring program. In designing the comprehensive monitoring program, the state board, among other things, shall integrate projects established in response to the Supplemental Report of the 1999 Budget Act, strive to take advantage of and incorporate existing data whenever possible, and prioritize groundwater basins that supply drinking water.

(b) (1) Create an interagency task force for all of the following purposes:

(A) Identifying actions necessary to establish the monitoring program.

(B) Identifying measures to increase coordination among state and federal agencies that collect information regarding groundwater contamination in the state.

(C) Designing a database capable of supporting the monitoring program that is compatible with the state board's geotracker database.

(D) Assessing the scope and nature of necessary monitoring enhancements.

(E) Identifying the cost of any recommended measures.

(F) Identifying the means by which to make monitoring information available to the public.

(2) The interagency task force shall consist of a representative of each of the following entities:

(A) The state board.

(B) The department.

(C) The State Department of Health Services.

(D) The Department of Pesticide Regulation.

(E) The Department of Toxic Substances Control.

(F) The Department of Food and Agriculture.

(c) Convene an advisory committee to the interagency task force, with a membership that includes all of the following:

(1) Two representatives of appropriate federal agencies, if those agencies wish to participate.

(2) Two representatives of public water systems, one of which shall be a representative of a retail water supplier.

(3) Two representatives of environmental organizations.

(4) Two representatives of the business community.

(5) One representative of a local agency that is currently implementing a plan pursuant to Part 2.75 (commencing with Section 10750).

(6) Two representatives of agriculture.

(7) Two representatives from groundwater management entities.

(d) (1) The members of the advisory committee may receive a per diem allowance for each day's attendance at a meeting of the advisory committee.

(2) The members of the advisory committee may be reimbursed for actual and necessary travel expenses incurred in connection with their official duties.

10782. On or before March 1, 2003, the state board, in consultation with the other task force agencies specified in Section 10781, shall report to the Governor and the Legislature. The multiagency report shall include all of the following:

(a) A detailed description of a comprehensive groundwater quality monitoring program for California that accomplishes the goals and objectives of the act adding this part.

(b) A description of how the program takes maximum advantage of existing information and an assessment of additional monitoring necessary to support the program.

(c) A specific set of recommendations for coordinating and, as necessary, restructuring existing monitoring programs to efficiently achieve the goals of this part.

(d) An estimate of funding necessary to implement the comprehensive program and the factual basis for the estimate.

(e) Recommendations with regard to an ongoing source of funds to pay for the program.

(f) A ranked list of actions that, if implemented independently, would increase the effectiveness of monitoring efforts.

10782.3. The state board shall use existing resources to carry out this part, and the operation of the program set forth in this part shall not supplant the operation of any other program required to be undertaken by the state board.

CHAPTER 523

An act to amend Sections 12841 and 12841.1 of, and to add Section 12847.5 to, the Food and Agricultural Code, relating to pesticides, and making an appropriation therefor.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

I am signing Assembly Bill 780. However, due to the rapid decline in our economy and a budget shortfall of $1.1 billion in the first three months of this fiscal year alone, I have no choice but to oppose additional General Fund spending. As a result, I am deleting the $7 million General Fund appropriation contained in the bill.

This bill reauthorizes the pesticide mil assessment, which funds approximately 60% of the programmatic activity of the Department of Pesticide Regulation (DPR), at the current rate of 17.5 mils until June 30, 2004. I am signing this bill to maintain the current assessment rate because it does not add an additional financial burden on the regulated industries. Moreover, this action will avoid the potential for the assessment to revert to an unacceptably low level in future years.

However, I am directing the Director of DPR to bring the stakeholders together as specified by this bill to help craft a longer term solution for support of the Department.

I am committed to the continuation of California's nationally renowned pesticide regulatory program and the benefits it provides. Because DPR has sufficient funding for the current fiscal year, I believe that addressing the funding shortfall for the 2002–03 fiscal year during the budget development process would be more appropriate.

GRAY DAVIS, Governor

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

SECTION 1. Section 12841 of the Food and Agricultural Code is amended to read:

12841. (a) It is unlawful for any person to sell for use in this state any pesticide products that have been registered by the director for which the mill assessment established by this article, and the regulations adopted pursuant to it, is not paid at the times specified in Section 12843.

(b) Except as provided in subdivision (d), every person who sells for use in this state a pesticide product that has been registered by the director shall pay to the director the applicable assessment. Those sales expressly include all sales made electronically, telephonically, or by any other means that result in a pesticide product being shipped to or used in this state. There is a rebuttable presumption that pesticide products that are sold or distributed into or within this state by any person are sold or distributed for use in this state.

(c) (1) Upon application of any registrant, the director shall determine whether a fertilizer or paper product is used as a carrier for a pesticide, and is sold in combination, and whether the mill assessment under this article shall be on the pesticide value only, when the product is designed, developed, and manufactured, and sold primarily for other

than a pesticide use. If the director finds that the combination product has such a major component and is designed, developed, manufactured, and sold primarily for other than a pesticide use, the assessment provided by this article shall be paid on the equivalent percentage of the sales price of the active ingredients of the pesticide product. The director shall establish this percentage of the sales price. The percentage shall be the ratio of that portion of the sales price attributable to the pesticide portion to the total sales price of the combination product.

(2) For purposes of this section, ''active ingredient'' means any active ingredient that is required to be stated on the label on any registered pesticide under Section 12883.

(d) Assessments provided for in this article for sales of registered pesticides that are sold for use in this state shall be paid by the registrant except as follows:

(1) In those cases where the registrant did not first sell the pesticide into or within this state or have actual knowledge, at the time of its sale, that the pesticide would be sold for use in this state, the assessment shall be paid by the licensed pesticide broker, licensed pest control dealer, or other person who first sold the pesticide for use in this state.

(2) No person is required to pay an assessment on registered products that are labeled only for use in further manufacturing or formulating of pesticides.

(e) It has been and continues to be the intent of the Legislature that this division requires the department to register all pesticides prior to their sale for use in this state and, except as otherwise provided by law, requires the department to regulate and control the use of pesticides in accordance with this division. Except as provided in Section 12841.1, the department shall continue to collect the assessment as provided in this article at the same rate on all registered agricultural and registered nonagricultural pesticides.

(f) (1) Except as provided in paragraph (2), the mill assessment shall be paid at the following rates per dollar of sales for all sales of pesticides for use in this state:

(A) From January 1, 1998, to March 31, 1999, inclusive, the rate shall be 15.15 mills ($0.01515) plus any additional assessment authorized by Section 12841.1.

(B) From April 1, 1999, to December 31, 2002, inclusive, the rate shall be 17.5 mills ($0.0175) plus any additional assessment authorized by Section 12841.1.

(C) From January 1, 2003, to June 30, 2004, inclusive, the rate shall be 17.5 mills ($0.0175).

(D) Effective July 1, 2004, and thereafter, the rate shall be 9 mills ($0.009).

(2) In order to avoid the accumulation of unneeded revenues, the director shall, by the adoption of an emergency regulation pursuant to subdivision (h), set the mill assessment rate lower than the rate established in subparagraphs (A), (B), and (C) of paragraph (1) if the director determines that program needs are adequately met and that revenues collected would result in a prudent reserve in the Department of Pesticide Regulation Fund by the end of the 2001–02 fiscal year greater than two million five hundred thousand dollars ($2,500,000). In no case shall the lower mill rate result in revenues that are less than the revenues that the rate established in subparagraphs (A) and (B) of paragraph (1) would generate if each mill was valued at one million four hundred eighty-two thousand dollars ($1,482,000).

(g) The revenue collected from the mill assessment shall be deposited in the Department of Pesticide Regulation Fund, except as specified in Section 12841.1, and distributed as follows:

(1) Notwithstanding Sections 2282 and 12784, the director shall pay, in accordance with the criteria set forth in Section 12844, the following amounts to the counties as reimbursement for costs incurred by the counties in the administration and enforcement of Division 6 (commencing with Section 11401), this chapter, Chapter 3 (commencing with Section 14001), Chapter 3.4 (commencing with Section 14090), and Chapter 3.5 (commencing with Section 14101):

(A) From January 1, 1998, to March 31, 1998, inclusive, five-eighths of the money received during that period pursuant to this section.

(B) Beginning April 1, 1998, and thereafter, an amount equal to the revenue derived from 6 mills ($0.006) per dollar of sales for all pesticide sales for use in this state.

(2) All funds not otherwise distributed pursuant to this subdivision shall remain in the Department of Pesticide Regulation Fund and shall be available for expenditure, upon appropriation, to support the department's operations.

(h) Any change to the mill assessment rate established pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (f) shall be made by the adoption of an emergency regulation and shall be determined by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Thereafter, the regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall remain in effect for no more than four consecutive quarters. The director shall make available to the public, at least 60 days prior to the adoption of an emergency regulation establishing a new rate, the information upon which the director has calculated the new rate.

SEC. 2. Section 12841.1 of the Food and Agricultural Code is amended to read:

12841.1. (a) Between January 1, 1998, and July 1, 2004, the director may collect an assessment, in addition to the mill assessment collected pursuant to Section 12841, for all pesticide sales for use in this state except for sales for use in this state of those nonagricultural pesticides labeled only for home, industrial, or institutional use. The director may only collect up to an additional three-fourths mill ($0.00075) per dollar of sales, as part of the rate established pursuant to Section 12841, if necessary to fund, or augment the funding for, an appropriation to the Department of Food and Agriculture to provide pesticide consultation to the department pursuant to Section 11454.2. The necessity of this additional assessment shall be determined by the Secretary of Food and Agriculture, in consultation with the director, on an annual basis after consideration of all other revenue sources, including any reserves, which may be appropriated for this purpose. The secretary's written determination, including a request for a specified additional assessment and the basis for that request, shall be provided to the department in a time and manner prescribed by the director to fulfill the requirements of Section 12841, and shall be made available to the public pursuant to the requirements of subparagraph (B) of paragraph (1) of subdivision (f) of Section 12841.

(b) The revenue collected pursuant to this section shall be deposited monthly in a separate account in the Department of Food and Agriculture Fund. These revenues shall be expended only by the Department of Food and Agriculture, upon appropriation, to provide consultation to the department pursuant to Section 11454.2. No funds may be expended prior to the execution of a memorandum of understanding pursuant to subdivision (b) of Section 11454.2. The consultation activities to be undertaken by the Department of Food and Agriculture are limited solely to those specifically authorized in the memorandum of understanding executed pursuant to Section 11454.2. These funds may not be expended for scientific risk assessment activities. The department shall be reimbursed from the Department of Food and Agriculture Fund for revenue collection activities.

(c) This section shall remain in effect only until July 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2004, deletes or extends that date.

SEC. 3. Section 12847.5 is added to the Food and Agricultural Code, to read:

12847.5. (a) (1) By January 1, 2003, the Department of Pesticide Regulation shall analyze the following issues and report its findings to the Legislature:

(A) The ongoing funding needs for the department to allow it to carry out its responsibilities under state statutes and regulations.

(B) The appropriate mix of general funds and special funds, including the pesticide mill assessment, to support the department's activities.

(C) The appropriate rate of mill assessment on pesticide products that are used primarily in agricultural production and the appropriate rate for all other pesticide products.

(D) Potential improvements in the efficiency of the department's operations, including mechanisms to share workload with the United States Environmental Protection Agency associated with requests to register pesticides for use in California.

(2) The purpose of the analysis and report shall be to recommend a funding solution for the department that will eliminate the need to reauthorize the mill assessment on pesticide and consumer product sales every five years and that will preserve the accountability of the department to the entities contributing to the financing of the department.

(b) (1) To assist the department in preparing the analysis and report required under subdivision (a), the director shall convene a subcommittee of the Pest Management Advisory Committee by January 1, 2002, that shall include, but shall not be limited to, at least two representatives from the following groups or agencies:

(A) Department of Pesticide Regulation.

(B) Environmental advocates.

(C) Consumer product manufacturers.

(D) Pesticide manufacturers.

(E) Production agriculture.

(F) Farm labor advocates.

(G) Employee unions.

(H) County agriculture commissioners.

(I) Public health advocates.

(J) Legislative staff from policy or fiscal committees.

(2) The subcommittee shall be disbanded upon completion of the report required in subdivision (a).

SEC. 4. The sum of seven million dollars ($7,000,000) is hereby appropriated from the General Fund to the Department of Pesticide Regulation to implement this act.

CHAPTER 524

An act to add Section 105291 to the Health and Safety Code, relating to lead poisoning prevention.

[Approved by Governor October 4, 2001. Filed with
Secretary of State October 5, 2001.]

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

SECTION 1. Section 105291 is added to the Health and Safety Code, to read:

105291. In addition to any other providers determined to be eligible by the department to provide environmental investigation services as a part of case management services under this chapter, a qualified certified industrial hygienist or other qualified professional who is certified by the department as an inspector/assessor shall be eligible to provide those services and those services shall be funded under the Childhood Lead Poisoning Prevention Program pursuant to this chapter.

CHAPTER 525

An act to add Article 2.5 (commencing with Section 1221) to Chapter 1 of Division 2 of the Health and Safety Code, relating to clinics.

[Approved by Governor October 4, 2001. Filed with
Secretary of State October 5, 2001.]

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

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

(a) There are an estimated 7 million persons in California without health insurance coverage.

(b) Many of these 7 million persons have no access to preventive primary health care services due to their being no health care facility in their communities.

(c) Nonprofit community health centers were created by the federal and state governments to serve uninsured, medically indigent communities, and establish clinic sites in these communities.

(d) Nonprofit community health center corporations continue to expand their clinic networks by establishing new clinic sites in federally designated medically underserved areas, serving medically underserved populations in health professional shortage areas.

(e) The State Department of Health Services Licensing and Certification Division is responsible for conduction licensing reviews of clinic sites.

(f) It can take up to one year to conduct a licensing review of a new clinic site, and the department can issue a six-month temporary license that allows new clinic sites to operate 20 hours per week.

SEC. 2. Article 2.5 (commencing with Section 1221) is added to Chapter 1 of Division 2 of the Health and Safety Code, to read:

Article 2.5 Licensing of Clinics

1221. For purposes of this article, the following definitions shall apply:

(a) ''Centralized applications unit'' means the centralized applications unit in the Licensing and Certification Division of the State Department of Health Services, or a successor entity.

(b) ''Clinic'' means nonprofit primary care clinics, nonprofit community health centers, nonprofit community clinics, and free clinics.

1221.05. Commencing July 1, 2002, all new applications for licenses for clinics shall be reviewed by the centralized applications unit.

1221.09. Commencing January 1, 2002, the centralized applications unit shall work with organizations that are among and advocate on behalf of, clinics to streamline application forms and clarify information needed to qualify as completed.

1221.11. Commencing January 1, 2002, a telephone number shall be provided for applicants to verify receipt of their application by the Licensing and Certification Division.

1221.13. All new applications submitted to the centralized applications unit shall be reviewed within two weeks for completeness. The centralized applications unit shall resolve minor issues directly with the applicant.

1221.15. (a) Commencing January 1, 2002, the Licensing and Certification Division shall designate at least one surveyor in each of the four regions to specialize in clinic surveys and complaint investigations. The program shall cross-train additional staff in this specialty.

(b) Commencing January 1, 2002, all completed packages forwarded by the centralized applications unit to the regional clinic specialists shall be scheduled for survey within 30 days of receipt.

1221.17. The Licensing and Certification Program training unit shall work with organizations that are among and advocate on behalf of clinics and other stakeholders to develop a training curriculum on clinic specialization, including the special needs of rural clinics.

1221.19. The centralized applications unit and regional offices shall be routinely reviewed by the department beginning January 31, 2003, to

determine if applications for clinic licenses are processed in a timely and effective manner.

CHAPTER 526

An act to add Section 14087.23 to the Welfare and Institutions Code, relating to Medi-Cal reimbursement.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 14087.23 is added to the Welfare and Institutions Code, to read:

14087.23. (a) Notwithstanding any other provision of law, and except as provided in subdivision (b), a county-operated community clinic, exempt from licensure under Section 1206 of the Health and Safety Code, which is operated by a county which, on or before November 30, 1997, ceased to operate a county-operated hospital with an outpatient department, shall be reimbursed for Medi-Cal services using the same methodology used for reimbursement of a licensed surgical center, to the extent federal financial participation is available.

(b) Providers that are independently billing for physician services provided in clinics described in subdivision (a) shall be subject to the reduction in reimbursement consistent with physician services provided in an outpatient hospital department.

CHAPTER 527

An act to amend Section 12002 of the Penal Code, relating to peace officers.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 12002 of the Penal Code is amended to read:

12002. (a) Nothing in this chapter prohibits police officers, special police officers, peace officers, or law enforcement officers from carrying

any wooden club, baton, or any equipment authorized for the enforcement of law or ordinance in any city or county.

(b) Nothing in this chapter prohibits a uniformed security guard, regularly employed and compensated by a person engaged in any lawful business, while actually employed and engaged in protecting and preserving property or life within the scope of his or her employment, from carrying any wooden club or baton if the uniformed security guard has satisfactorily completed a course of instruction certified by the Department of Consumer Affairs in the carrying and use of the club or baton. The training institution certified by the Department of Consumer Affairs to present this course, whether public or private, is authorized to charge a fee covering the cost of the training.

(c) The Department of Consumer Affairs, in cooperation with the Commission on Peace Officer Standards and Training, shall develop standards for a course in the carrying and use of the club or baton.

(d) Any uniformed security guard who successfully completes a course of instruction under this section is entitled to receive a permit to carry and use a club or baton within the scope of his or her employment, issued by the Department of Consumer Affairs. The department may authorize certified training institutions to issue permits to carry and use a club or baton. A fee in the amount provided by law shall be charged by the Department of Consumer Affairs to offset the costs incurred by the department in course certification, quality control activities associated with the course, and issuance of the permit.

(e) Any person who has received a permit or certificate which indicates satisfactory completion of a club or baton training course approved by the Commission on Peace Officer Standards and Training prior to January 1, 1983, shall not be required to obtain a baton or club permit or complete a course certified by the Department of Consumer Affairs.

(f) Any person employed as a county sheriff's or police security officer, as defined in Section 831.4, shall not be required to obtain a club or baton permit or to complete a course certified by the Department of Consumer Affairs in the carrying and use of a club or baton, provided that the person completes a course approved by the Commission on Peace Officer Standards and Training in the carrying and use of the club or baton, within 90 days of employment.

(g) Nothing in this chapter prohibits an animal control officer, as described in Section 830.9, from carrying any wooden club or baton if the animal control officer has satisfactorily completed a course of instruction certified by the Department of Consumer Affairs in the carrying and use of the club or baton. The training institution certified by the Department of Consumer Affairs to present this course, whether

public or private, is authorized to charge a fee covering the cost of the training.

CHAPTER 528

An act to amend Section 14087.9655 of, and to add Section 14087.9657 to, the Welfare and Institutions Code, relating to health.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 14087.9655 of the Welfare and Institutions Code is amended to read:

14087.9655. (a) The governing body shall establish a technical advisory committee to provide technical expertise to the governing body.

(b) Members of the committee shall include a medical school representative, an epidemiologist, a pharmacist, a representative of a nursing association, a home health care representative, a long-term care provider, a mental health care provider, a medical rehabilitation provider, and an expert on health care quality, or, in the alternative, other persons with health care expertise.

(c) The technical advisory committee shall meet on a regular basis, and shall make recommendations and reports to the governing body.

SEC. 2. Section 14087.9657 is added to the Welfare and Institutions Code, to read:

14087.9657. (a) The governing body shall establish a children's health consultant advisory committee to provide to the governing body expertise on child, adolescent, and maternal health issues.

(b) Members of the committee shall include representatives of government health departments and school districts in the geographic area served by the local initiative, as well as medical professionals with background in pediatrics and obstetric care, or, in the alternative, other persons with health care expertise.

(c) The children's health consultant advisory committee shall meet on a regular basis, and shall make recommendations and reports to the governing body.

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 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.

CHAPTER 529

An act to amend Section 123148 of the Health and Safety Code, relating to health records.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 123148 of the Health and Safety Code is amended to read:

123148. (a) Notwithstanding any other provision of law, a health care professional at whose request a test is performed shall provide or arrange for the provision of the results of a clinical laboratory test to the patient who is the subject of the test if so requested by the patient, in oral or written form. The results shall be conveyed in plain language and in oral or written form, except the results may be conveyed in electronic form if requested by the patient and if deemed most appropriate by the health care professional who requested the test. Consent of the patient to receive his or her laboratory results by Internet posting or in other electronic form shall be obtained in a manner consistent with the requirements of Section 56.11 of the Civil Code.

(b) In the event that a health care professional arranges for the provision of test results by Internet posting or other electronic manner, the results shall be delivered to a patient in a reasonable time period, but only after the results have been reviewed by the health care professional. Access to clinical laboratory test results shall be restricted by the use of a secure personal identification number when the results are delivered to a patient by Internet posting or other electronic manner.

(c) When a patient requests to receive his or her laboratory test results by Internet posting, the health care professional shall advise the patient of any charges that may be assessed directly to the patient or insurer for the service and that the patient may call the health care professional for a more detailed explanation of the laboratory test results when delivered.

(d) The electronic provision of test results under this section shall be in accordance with any applicable federal law governing privacy and security of electronic personal health records. However, any state statute, if enacted, that governs privacy and security of electronic

personal health records, shall apply to test results under this section and shall prevail over federal law if federal law permits.

(e) The test results to be reported to the patient pursuant to this section shall be recorded in the patient's medical record, and shall be reported to the patient within a reasonable time period after the test results are received at the offices of the health care professional who requested the test.

(f) Notwithstanding subdivisions (a) and (b), none of the following clinical laboratory test results and any other related results shall be conveyed to a patient by Internet posting or other electronic manner:

(1) HIV antibody test.

(2) Presence of antigens indicating a hepatitis infection.

(3) Abusing the use of drugs.

(4) Test results related to routinely processed tissues, including skin biopsies, Pap smear tests, products of conception, and bone marrow aspirations for morphological evaluation.

(g) Patient identifiable test results and health information that have been provided under this section shall not be used for any commercial purpose without the consent of the patient, obtained in a manner consistent with the requirements of Section 56.11 of the Civil Code.

(h) Any third party to whom laboratory test results are disclosed pursuant to this section shall be deemed a provider of administrative services, as that term is used in paragraph (3) of subdivision (c) of Section 56.10 of the Civil Code, and shall be subject to all limitations and penalties applicable to that section.

(i) A patient may not be required to pay any cost, or be charged any fee, for electing to receive his or her laboratory results in any manner other than by Internet posting or other electronic form.

(j) A patient or his or her physician may revoke any consent provided under this section at any time and without penalty, except to the extent that action has been taken in reliance on that consent.

CHAPTER 530

An act to amend Sections 56658, 56666, 56800, 56815, 56895, 57002, and 57050 of the Government Code, relating to local agency formation.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. The Legislature finds and declares that citizens often seek to form new municipalities to provide more direct local control and accountability over a variety of municipal services including, land use, police, fire, code enforcement, and many other services. The Legislature has allowed for the formation of new municipalities through the general policies of the Cortese-Knox-Hertzberg Reorganization Act of 2000 and prior laws.

It is the intent of the Legislature to provide a process for the incorporation of communities that demonstrate the necessary resources and capacity for self-governance, while at the same time protecting the financial stability of the new city, the county, and other affected agencies. It is the intent of this act to require the incorporation process to be implemented through a rational and predictable process of gathering information, and determining the appropriate mitigation of financial impacts and incorporation conditions.

SEC. 2. Section 56658 of the Government Code is amended to read:

56658. (a) Any petitioner or legislative body desiring to initiate proceedings shall submit an application to the executive officer of the principal county.

(b) (1) Immediately after receiving an application and before issuing a certificate of filing, the executive officer shall give mailed notice that the application has been received to each interested agency and each subject agency, the county committee on school district organization, and each school superintendent whose school district overlies the subject area. The notice shall generally describe the proposal and the affected territory. The executive officer shall not be required to give notice pursuant to this subdivision if a local agency has already given notice pursuant to subdivision (b) of Section 56654.

(2) It is the intent of the Legislature that an incorporation proposal shall be processed in a timely manner. With regard to an application that includes an incorporation, the executive officer shall immediately notify all affected local agencies and any applicable state agencies by mail and request the affected agencies to submit the required data to the commission within a reasonable timeframe established by the executive officer. Each affected agency shall respond to the executive officer within 15 days acknowledging receipt of the request. Each affected local agency and the officers and departments thereof shall submit the required data to the executive officer within the timelines established by the executive officer. Each affected state agency and the officers and departments thereof shall submit the required data to the executive officer within the timelines agreed upon by the executive officer and the affected state departments.

(c) If a special district is, or as a result of a proposal will be, located in more than one county, the executive officer of the principal county shall immediately give the executive officer of each other affected county mailed notice that the application has been received. The notice shall generally describe the proposal and the affected territory.

(d) Except when a commission is the lead agency pursuant to Section 21067 of the Public Resources Code, the executive officer shall determine within 30 days of receiving an application whether the application is complete and acceptable for filing or whether the application is incomplete.

(e) The executive officer shall not accept an application for filing and issue a certificate of filing for at least 20 days after giving the mailed notice required by subdivision (b). The executive officer shall not be required to comply with this subdivision in the case of an application which meets the requirements of Section 56663 or in the case of an application for which a local agency has already given notice pursuant to subdivision (b) of Section 56654.

(f) If the appropriate fees have been paid, an application shall be deemed accepted for filing if no determination has been made by the executive officer within the 30-day period. An executive officer shall accept for filing, and file, any application submitted in the form prescribed by the commission and containing all of the information and data required pursuant to Section 56652.

(g) When an application is accepted for filing, the executive officer shall immediately issue a certificate of filing to the applicant. A certificate of filing shall be in the form prescribed by the executive officer and shall specify the date upon which the proposal shall be heard by the commission. From the date of issuance of a certificate of filing, or the date upon which an application is deemed to have been accepted, whichever is earlier, an application shall be deemed filed pursuant to this division.

(h) If an application is determined not to be complete, the executive officer shall immediately transmit that determination to the applicant specifying those parts of the application which are incomplete and the manner in which they can be made complete.

(i) Following the issuance of the certificate of filing, the executive officer shall proceed to set the proposal for hearing and give published notice thereof as provided in this part. The date of the hearing shall be not more than 90 days after issuance of the certificate of filing or after the application is deemed to have been accepted, whichever is earlier. Notwithstanding Section 56106, the date for conducting the hearing, as determined pursuant to this subdivision, is mandatory.

SEC. 3. Section 56666 of the Government Code is amended to read:

56666. (a) The hearing shall be held by the commission upon the date and at the time and place specified. The hearing may be continued from time to time but not to exceed 70 days from the date specified in the original notice.

(b) At the hearing, the commission shall hear and receive any oral or written protests, objections, or evidence that shall be made, presented, or filed, and consider the report of the executive officer and the plan for providing services to the territory prepared pursuant to Section 56653.

(c) Prior to any continuance of a hearing pursuant to this section regarding a proposal that includes an incorporation, the chief petitioners shall have an opportunity to address the commission on any potential impacts or hardships on the incorporation effort that may result from a delay. The commission shall consider the potential impacts on the incorporation proponents prior to making a decision on the duration of any continuance.

SEC. 4. Section 56800 of the Government Code is amended to read:

56800. For any proposal that includes an incorporation, the executive officer shall prepare, or cause to be prepared by contract, a comprehensive fiscal analysis. This analysis shall become part of the report required pursuant to Section 56665. Data used for the analysis shall be from the most recent fiscal year for which data are available, preceding the issuances of the certificate of filing. When data requested by the executive officer in the notice to affected agencies are unavailable, the analysis shall document the source and methodology of the data used. The analysis shall review and document each of the following:

(a) The costs to the proposed city of providing public services and facilities during the three fiscal years following incorporation in accordance with the following criteria:

(1) When determining costs, the executive officer shall include all direct and indirect costs associated with the current provision of existing services in the affected territory. These costs shall reflect the actual or estimated costs at which the existing level of service could be contracted by the proposed city following an incorporation, if the city elects to do so, and shall include any general fund expenditures used to support or subsidize a fee-supported service where the full costs of providing the service are not fully recovered through fees. The executive officer shall also identify which of these costs shall be transferred to the new city that result in an administrative cost reduction to other agencies. In the analysis, the executive officer shall also review how the costs of any existing services compare to the costs of services provided in cities with similar populations and similar geographic size that provide a similar level and range of services and shall make a reasonable determination of the costs expected to be borne by the newly incorporated city.

(2) When determining costs, the executive officer shall also include all direct and indirect costs of any public services that are proposed to be assumed by the new city and that are provided by state agencies in the area proposed to be incorporated.

(b) The revenues of the proposed city during the three fiscal years following incorporation.

(c) The effects on the costs and revenues of any affected local agency during the three fiscal years of incorporation.

(d) Any other information and analysis needed to make the findings required by Section 56720.

SEC. 5. Section 56815 of the Government Code is amended to read:

56815. (a) It is the intent of the Legislature that any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other subject agencies. It is the further intent of the Legislature that an incorporation should not occur primarily for financial reasons.

(b) The commission shall not approve a proposal that includes an incorporation unless it finds that the following two quantities are substantially equal:

(1) Revenues currently received by the local agency transferring the affected territory that, but for the operation of this section, would accrue to the local agency receiving the affected territory.

(2) Expenditures, including direct and indirect expenditures, currently made by the local agency transferring the affected territory for those services that will be assumed by the local agency receiving the affected territory.

(c) Notwithstanding subdivision (b), the commission may approve a proposal that includes an incorporation if it finds either of the following:

(1) The county and all of the subject agencies agree to the proposed transfer.

(2) The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to Section 56886.

(d) Nothing in this section is intended to change the distribution of growth on the revenues within the affected territory unless otherwise provided in the agreement or agreements specified in paragraph (2) of subdivision (c).

(e) Any terms and conditions that mitigate the negative fiscal effect of a proposal that contains an incorporation shall be included in the commission resolution making determinations adopted pursuant to Section 56880 and the terms and conditions specified in the questions pursuant to Section 57134.

SEC. 6. Section 56895 of the Government Code is amended to read:

56895. (a) When a commission has adopted a resolution making determinations, any person or affected agency may file a written request with the executive officer requesting amendments to or reconsideration of the resolution. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously, or applicable new law, are claimed to warrant the reconsideration. If the request is filed by a school district that received notification pursuant to Section 56658, the commission shall consider that request at a public hearing.

(b) Notwithstanding Section 56106, the deadlines set by this section are mandatory. The person or agency shall file the written request within 30 days of the adoption of the initial or superseding resolution by the commission making determinations. If no person or agency files a timely request, the commission shall not take any action pursuant to this section.

(c) Upon receipt of a timely request, the executive officer shall not take any further action until the commission acts on the request.

(d) Upon receipt of a timely request by the executive officer, the time to file any action, including, but not limited to, an action pursuant to Section 21167 of the Public Resources Code and any provisions of Part 4 (commencing with Section 57000) governing the time within which the commission is to act shall be tolled for the time that the commission takes to act on the request.

(e) The executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given pursuant to this subdivision. The executive officer shall give notice of the consideration of the request by the commission in the same manner as for the original proposal. The executive officer may give notice in any other manner as he or she deems necessary or desirable.

(f) At that meeting, the commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 35 days from the date specified in the notice. The person or agency that filed the request may withdraw it at any time prior to the conclusion of the consideration by the commission.

(g) At the conclusion of its consideration, the commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. If the commission disapproves the request, it shall not adopt a new resolution making determinations. If the commission approves the request, with or without amendment, wholly, partially, or conditionally, the commission shall adopt a resolution making determinations that shall supersede the resolution previously issued.

(h) The determinations of the commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by the commission.

(i) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected pursuant to Section 56854.

SEC. 6.5. Section 56895 of the Government Code is amended to read:

56895. (a) When a commission has adopted a resolution making determinations, any person or affected agency may file a written request with the executive officer requesting amendments to or reconsideration of the resolution. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously, or applicable new law, are claimed to warrant the reconsideration. If the request is filed by a school district that received notification pursuant to Section 56658, the commission shall consider that request at a public hearing.

(b) Notwithstanding Section 56106, the deadlines set by this section are mandatory. The person or agency shall file the written request within 30 days of the adoption of the initial or superseding resolution by the commission making determinations. If no person or agency files a timely request, the commission shall not take any action pursuant to this section.

(c) Upon receipt of a timely request, the executive officer shall not take any further action until the commission acts on the request.

(d) Upon receipt of a timely request by the executive officer, the time to file any action, including, but not limited to, an action pursuant to Section 21167 of the Public Resources Code and any provisions of Part 4 (commencing with Section 57000) governing the time within which the commission is to act shall be tolled for the time that the commission takes to act on the request.

(e) The executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given pursuant to this subdivision. The executive officer shall give notice of the consideration of the request by the commission in the same manner as for the original proposal. The executive officer may give notice in any other manner as he or she deems necessary or desirable.

(f) At that meeting, the commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 35 days from the date specified in the notice. The person or agency that filed the request may withdraw it at any time prior to the conclusion of the consideration by the commission.

(g) At the conclusion of its consideration, the commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. If the commission disapproves the request, it shall not adopt a new resolution making determinations. If the commission approves the request, with or without amendment, wholly, partially, or conditionally, the commission shall adopt a resolution making determinations that shall supersede the resolution previously issued.

(h) The determinations of the commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by the commission.

(i) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected pursuant to Section 56883.

SEC. 7. Section 57002 of the Government Code is amended to read:

57002. (a) Within 35 days following the adoption of the commission's resolution making determinations, and following the reconsideration period specified in subdivision (b) of Section 56895, the executive officer of the commission shall set the proposal for hearing and give notice of that hearing by mailing, publication, and posting, as provided in Chapter 4 (commencing with Section 56150) of Part 1. The date of that hearing shall not be less than 15 days, or more than 60 days, after the date the notice is given.

(b) Notwithstanding subdivision (a), for any proposal that includes an incorporation, the executive officer of the conducting authority shall set the proposal for hearing within 15 days following the adoption of the commission's resolution making determinations. The hearing shall be set for the next regularly scheduled hearing that provides sufficient time to give public notice of that hearing by mailing, publication, and posting, as provided in Chapter 4 (commencing with Section 56150) of Part 1.

(c) Where the proceeding is for the establishment of a district of limited powers as a subsidiary district of a city, upon the request of the affected district, the date of the hearing shall be at least 90 days, but no more than 135 days, from the date the notice is given.

(d) If authorized by the commission pursuant to Section 56663, a change of organization or reorganization may be approved without notice, hearing, and election.

SEC. 8. Section 57050 of the Government Code is amended to read:

57050. (a) The protest hearing on the proposal shall be held by the commission on the date and at the time specified in the notice given by the executive officer. The hearing may be continued from time to time but not to exceed 60 days from the date specified for the hearing in the notice. The hearing on a proposal that includes an incorporation may be

continued from time to time but not to exceed 35 days from the date specified for the hearing in the notice.

(b) At the protest hearing, prior to consideration of protests, the commission's resolution making determinations shall be summarized. At that hearing, the commission shall hear and receive any oral or written protests, objections, or evidence that is made, presented, or filed. Any person who has filed a written protest may withdraw that protest at any time prior to the conclusion of the hearing.

SEC. 9. Section 6.5 of this bill incorporates amendments to Section 56895 of the Government Code proposed by both this bill and AB 720. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 56895 of the Government Code, and (3) this bill is enacted after AB 720, in which case Section 6 of this bill shall not become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 531

An act to amend Section 1373.95 of the Health and Safety Code, and to amend Section 10133.55 of the Insurance Code, relating to health care.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 1373.95 of the Health and Safety Code is amended to read:

1373.95. (a) (1) Except as provided in paragraph (2), every health care service plan that provides coverage on a group basis shall file with the Department of Managed Health Care, a written policy describing how the health plan shall facilitate the continuity of care for new enrollees receiving services during a current episode of care for an acute condition from a nonparticipating provider. This written policy shall describe the process used to facilitate the continuity of care, including the assumption of care by a participating provider.

(2) On or before July 1, 2002, a health care service plan that provides coverage on an employer-sponsored group basis or a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis shall file with the department a written policy describing how the health plan shall facilitate the continuity of care for new enrollees who have been receiving services for an acute, serious, or chronic mental health condition from a nonparticipating mental health provider when the enrollee's employer has changed health plans. Every written policy shall allow the new enrollee a reasonable transition period to continue his or her course of treatment with the nonparticipating mental health provider prior to transferring to another participating provider and shall include the provision of mental health services on a timely, appropriate, and medically necessary basis from the nonparticipating provider. The policy may provide that the length of the transition period take into account the severity of the enrollee's condition and the amount of time reasonably necessary to effect a safe transfer on a case-by-case basis. Nothing in this paragraph shall be construed to require the health care service plan or specialized health care service plan to accept a nonparticipating mental health provider onto its panel for treatment of other enrollees. The health care service plan or specialized health care service plan may require the nonparticipating mental health provider, as a condition of the right conferred under this section, to enter into the standard mental health provider contract.

(b) Notice of the policy and information regarding how enrollees may request a review under the policy shall be provided to all new enrollees, except those enrollees who are not eligible as described in subdivision (e). A copy of the written policy shall be provided to eligible enrollees upon request. The written policy required to be filed under subdivision (a) shall describe how requests to continue services with an existing provider are reviewed by the health care service plan or the specialized health care service plan. The policy shall ensure that reasonable consideration is given to the potential clinical effect that a change of provider would have on the enrollee's treatment for the condition.

(c) A health care service plan or specialized health care service plan may require any nonparticipating provider or nonparticipating mental health provider whose services are continued pursuant to the written policy to agree in writing to meet the same contractual terms and conditions that are imposed upon the plan's participating providers, including location within the plan's service area, reimbursement methodologies, and rates of payment. If the health care service plan or specialized health care service plan determines that a patient's health care treatment should temporarily continue with the patient's existing provider or nonparticipating mental health provider, the health care service plan or specialized health care service plan shall not be liable for

actions resulting solely from the negligence, malpractice, or other tortious or wrongful acts arising out of the provision of services by the existing provider or nonparticipating mental health provider.

(d) Nothing in this section shall require a health care service plan or specialized health care service plan to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract.

(e) The written policy shall not apply to any enrollee who is offered an out-of-network option, or who had the option to continue with his or her previous health plan or provider and instead voluntarily chose to change health plans.

(f) This section shall not apply to health care service plan contracts or specialized health care service plan contracts that include out-of-network coverage under which the enrollee is able to obtain services from the enrollee's existing provider or nonparticipating mental health provider.

(g) (1) For purposes of this section, ''provider'' refers to a person who is described in subdivision (f) of Section 900 of the Business and Professions Code.

(2) For purposes of this section, ''nonparticipating provider'' refers to a psychiatrist, licensed psychologist, licensed marriage and family therapist, or licensed social worker who is not part of the health care service plan or specialized health care service plan.

SEC. 2. Section 10133.55 of the Insurance Code is amended to read:

10133.55. (a) (1) Except as provided in paragraph (2), every disability insurer covering hospital, medical, and surgical expenses on a group basis that contracts with providers for alternative rates pursuant to Section 10133 and limits payments under those policies to services secured by insureds and subscribers from providers charging alternative rates pursuant to these contracts, shall file with the Department of Insurance, a written policy describing how the insurer shall facilitate the continuity of care for new insureds or enrollees receiving services during a current episode of care for an acute condition from a noncontracting provider. This written policy shall describe the process used to facilitate continuity of care, including the assumption of care by a contracting provider.

(2) On or before July 1, 2002, every disability insurer covering hospital, medical, and surgical expenses on a group basis that contracts with providers for alternative rates pursuant to Section 10133 and limits payments under those policies to services secured by insureds and subscribers from providers charging alternative rates pursuant to these contracts, shall file with the department a written policy describing how the insurer shall facilitate the continuity of care for new enrollees who have been receiving services for an acute, serious, or chronic mental

health condition from a nonparticipating mental health provider when the enrollee's employer has changed policies. Every written policy shall allow the new enrollee a reasonable transition period to continue his or her course of treatment with the nonparticipating mental health provider prior to transferring to another participating provider and shall include the provision of mental health services on a timely, appropriate, and medically necessary basis from the nonparticipating provider. The policy may provide that the length of the transition period take into account the severity of the enrollee's condition and the amount of time reasonably necessary to effect a safe transfer on a case-by-case basis. Nothing in this paragraph shall be construed to require the insurer to accept a nonparticipating mental health provider onto its panel for treatment of other enrollees. The insurer may require the nonparticipating mental health provider, as a condition of the right conferred under this section, to enter into the standard mental health provider contract.

(b) Notice of the policy and information regarding how enrollees may request a review under the policy shall be provided to all new enrollees, except those enrollees who are not eligible as described in subdivision (e). A copy of the written policy shall be provided to eligible enrollees upon request. The written policy required to be filed under subdivision (a) shall describe how requests to continue services with an existing noncontracting provider are reviewed by the insurer. The policy shall ensure that reasonable consideration is given to the potential clinical effect that a change of provider would have on the insured's or subscriber's treatment for the acute condition.

(c) An insurer may require any nonparticipating provider whose services are continued pursuant to the written policy to agree in writing to meet the same contractual terms and conditions that are imposed upon the insurer's participating providers, including location within the service area, reimbursement methodologies, and rates of payment. If the insurer determines that a patient's health care treatment should temporarily continue with the patient's existing provider or nonparticipating mental health provider, the insurer shall not be liable for actions resulting solely from the negligence, malpractice, or other tortious or wrongful acts arising out of the provision of services by the existing provider or nonparticipating mental health provider.

(d) Nothing in this section shall require an insurer to cover services or provide benefits that are not otherwise covered under the terms and conditions of the policy contract.

(e) The written policy shall not apply to any insured or subscriber who is offered an out-of-network option, or who had the option to continue with his or her previous health benefits carrier or provider and instead voluntarily chose to change.

(f) This section shall not apply to insurer contracts that include out-of-network coverage under which the insured or subscriber is able to obtain services from the insured's or subscriber's existing provider or nonparticipating mental health provider.

(g) (1) For purposes of this section, ''provider'' refers to a person who is described in subdivision (f) of Section 900 of the Business and Professions Code.

(2) For purposes of this section, ''nonparticipating provider'' refers to a psychiatrist, licensed psychologist, licensed marriage and family therapist, or licensed social worker who is not part of the insurer's contracted provider network.

(h) This section shall only apply to a group disability insurance policy if it provides coverage for hospital, medical, or surgical benefits.

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.

CHAPTER 532

An act to amend Sections 1601, 1603, 1628, 1636, 1636.5, 1742, 1749, and 1753 of, to amend, add, and repeal Section 1616.5 of, to add Sections 1638.7, 1645.1, 1648.15, and 1753.5 to, and to add and repeal Section 1601.1 of, the Business and Professions Code, relating to dentistry.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 1601 of the Business and Professions Code is amended to read:

1601. (a) There is in the Department of Consumer Affairs the Dental Board of California in which the administration of this chapter is vested. The board consists of eight practicing dentists, one registered dental hygienist, one registered dental assistant, and four public members. The board shall be organized into standing committees

dealing with examinations, enforcement, and other subjects as the board deems appropriate.

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. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

(b) For purposes of this chapter, any reference in this chapter to the Board of Dental Examiners shall be deemed to refer to the Dental Board of California.

SEC. 2. Section 1601.1 is added to the Business and Professions Code, to read:

1601.1. (a) There shall be in the Department of Consumer Affairs the Dental Board of California in which the administration of this chapter is vested. The board shall consist of eight practicing dentists, one registered dental hygienist, one registered dental assistant, and four public members. The appointing powers, described in Section 1603, may appoint to the board a person who was a member of the prior board. The board shall be organized into standing committees dealing with examinations, enforcement, and other subjects as the board deems appropriate.

(b) For purposes of this chapter, any reference in this chapter to the Board of Dental Examiners shall be deemed to refer to the Dental Board of California.

(c) The board shall have all authority previously vested in the existing board under this chapter. The board may enforce all disciplinary actions undertaken by the previous board.

(d) This section shall become operative on January 1, 2002.

(e) This section 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. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2.5. Section 1601.1 is added to the Business and Professions Code, to read:

1601.1. (a) There shall be in the Department of Consumer Affairs the Dental Board of California in which the administration of this chapter is vested. The board shall consist of eight practicing dentists, one registered dental hygienist, one registered dental assistant, and four public members. Of the eight practicing dentists, one shall be a member of a faculty of any California dental college and one shall be a dentist practicing in a nonprofit community clinic. The appointing powers, described in Section 1603, may appoint to the board a person who was

a member of the prior board. The board shall be organized into standing committees dealing with examinations, enforcement, and other subjects as the board deems appropriate.

(b) For purposes of this chapter, any reference in this chapter to the Board of Dental Examiners shall be deemed to refer to the Dental Board of California.

(c) The board shall have all authority previously vested in the existing board under this chapter. The board may enforce all disciplinary actions undertaken by the previous board.

(d) This section shall become operative on January 1, 2002.

(e) This section 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. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 3. Section 1603 of the Business and Professions Code is amended to read:

1603. Except for the initial appointments, members of the board shall be appointed for a term of four years, and each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

A vacancy occurring during a term shall be filled by appointment for the unexpired term, within 30 days after it occurs.

No person shall serve as a member of the board for more than two terms.

The Governor shall appoint two of the public members, the dental hygienist member, the dental assistant member, and the eight licensed dentist members of the board. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.

Of the initial appointments, one of the dentist members and one of the public members appointed by the Governor shall serve for a term of one year. Two of the dentist members appointed by the Governor shall each serve for a term of two years. One of the public members and two of the dentist members appointed by the Governor shall each serve a term of three years. The dental hygienist member, the dental assistant member, and the remaining three dentists members appointed by the Governor shall each serve for a term of four years. The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall each serve for a term of four years.

SEC. 4. Section 1616.5 of the Business and Professions Code is amended to read:

1616.5. 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 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. 5. Section 1616.5 is added to the Business and Professions Code, to read:

1616.5. (a) The board, by and with the approval of the director, 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.

(b) This section shall become operative on January 1, 2002.

(c) This section 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. 7. Section 1628 of the Business and Professions Code, as amended by Section 1 of Chapter 792 of the Statutes of 1997, is amended to read:

1628. Any person over 18 years of age is eligible to take an examination before the board upon making application therefor and meeting all of the following requirements:

(a) Paying the fee for applicants for examination provided by this chapter.

(b) Furnishing satisfactory evidence of having graduated from a reputable dental college, which shall have been approved by the board; provided, also, that applicants furnishing evidence of having graduated after 1921 shall also present satisfactory evidence of having completed at dental school or schools the full number of academic years of undergraduate courses required for graduation.

(c) Furnishing the satisfactory evidence of financial responsibility or liability insurance for injuries sustained or claimed to be sustained by a dental patient in the course of the examination as a result of the applicant's actions.

(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. 8. Section 1628 of the Business and Professions Code, as amended by Section 2 of Chapter 792 of the Statutes of 1997, is amended to read:

1628. Any person over 18 years of age is eligible to take an examination before the board upon making application therefor and meeting all of the following requirements:

(a) Paying the fee for applicants for examination provided by this chapter.

(b) Furnishing satisfactory evidence of having graduated from a reputable dental college, which shall have been approved by the board; provided, also, that applicants furnishing evidence of having graduated after 1921 shall also present satisfactory evidence of having completed at dental school or schools the full number of academic years of undergraduate courses required for graduation.

(c) Furnishing the satisfactory evidence of financial responsibility or liability insurance for injuries sustained or claimed to be sustained by a dental patient in the course of the examination as a result of the applicant's actions.

(d) If the applicant has been issued a degree of doctor of dental medicine or doctor of dental surgery by a foreign dental school, he or she shall furnish all of the following documentary evidence to the board:

(1) That he or she has completed in a dental school or schools approved by the board pursuant to Section 1636.4, a resident course of professional instruction in dentistry for the full number of academic years of undergraduate courses required for graduation.

(2) Subsequent thereto, he or she has been issued by the approved dental school, a dental diploma or a dental degree, as evidence of the completion of the course of dental instruction required for graduation.

(e) Any applicant, who has been issued a dental diploma from a foreign dental school, which has not been approved by the board pursuant to Section 1636.4 at the time of his or her graduation from the school, shall not be eligible for examination until the applicant has successfully completed a minimum of two academic years of education at a dental college approved by the board pursuant to Article 1 (commencing with Section 1024) of Chapter 2 of Division 10 of Title 16 of the California Code of Regulations. This subdivision shall not apply to applicants who have successfully completed the requirements of Section 1636 on or before December 31, 2002.

(f) This section shall become operative on January 1, 2004.

SEC. 9. Section 1636 of the Business and Professions Code is amended to read:

1636. (a) Notwithstanding subdivision (b) of Section 1628, a person who has been issued a degree of doctor of dental medicine or doctor of dental surgery by a foreign dental school shall be eligible for examination as provided in this section upon complying with subdivisions (a) and (c) of Section 1628 and furnishing all of the following documentary evidence satisfactory to the board, that:

(1) He or she has completed in a dental school or schools a resident course of professional instruction in dentistry for the full number of academic years of undergraduate courses required for graduation.

(2) Subsequent thereto, he or she has been issued by the dental school, a dental diploma or a dental degree, as evidence of the completion of the course of dental instruction required for graduation.

(b) An applicant who is a graduate of a foreign dental school accredited by a body which has a reciprocal accreditation agreement with any commission or accreditation agency whose findings are accepted by the board shall be exempt from the qualifying examination provided for in paragraph (2) of subdivision (c).

(c) Examination by the board of a foreign-trained dental applicant shall be a progressive examination given in the following sequence:

(1) Examination in writing which shall be comprehensive and sufficiently thorough to test the knowledge, skill, and competence of the applicant to practice dentistry, and both questions and answers shall be written in the English language.

The written examination may be the National Board of Dental Examiners' examination or other examination, but in no event shall the examination given to foreign-trained applicants be a different examination than that given to applicants who have met the requirements of subdivision (b) of Section 1628. A foreign-trained applicant who passes the written examination shall be permanently exempt from retaking the examination.

Those applicants who have passed the California written examination are permanently exempt from retaking any written examination, except any examination required for continuing education purposes.

(2) Demonstration of the applicant's skill in restorative technique. An applicant who obtains an overall average grade of 75 percent in the restorative technique examination and a grade of 75 percent or more in two of the three subsections shall be deemed to have passed the examination. However, an applicant who obtains a grade of 85 percent in any subsection of the examination is exempt from retaking the subsection for two years following the date of the examination in which a grade of 85 percent was obtained. Every applicant who passes the entire restorative technique examination is permanently exempt from retaking the examination.

(d) An applicant who has successfully completed the written examination and the restorative technique examination shall be eligible to take and shall pass the examinations in diagnosis-treatment planning, prosthetic dentistry, diagnosis and treatment of periodontics, and operative dentistry in the identical manner in which the examinations are taken by and administered to other dental applicants. Exemptions in the

examinations shall be applied to foreign-trained applicants in the same manner as they are applied to other dental applicants.

(e) 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. 10. Section 1636.5 of the Business and Professions Code is amended to read:

1636.5. (a) Notwithstanding Section 135, on and after January 1, 1993, an applicant who fails to pass the examination required by paragraph (2) of subdivision (c) of Section 1636 after four attempts shall not be eligible for further reexamination until the applicant has successfully completed a minimum of two academic years of education at a dental school approved by either the Commission on Dental Accreditation or a comparable organization approved by the board. When the applicant applies for reexamination, he or she shall furnish proof satisfactory to the board that he or she has successfully completed the requirements of this subdivision.

(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. 11. Section 1638.7 is added to the Business and Professions Code, to read:

1638.7. The next occupational analysis of dental licensees and oral and maxillofacial facial surgeons pursuant to Section 139 shall include a survey of the training and practices of oral and maxillofacial surgeons and, upon completion of that analysis, a report shall be made to the Joint Legislative Sunset Review Committee regarding the findings.

SEC. 12. Section 1645.1 is added to the Business and Professions Code to read:

1645.1. By January 1, 2005, each person who holds a registered dental assistant license shall provide evidence of having successfully completed board-approved courses in radiation safety and coronal polishing. The length and content of the courses shall be governed by applicable board regulations. Failure to comply with this section shall result in automatic suspension of the license which shall be reinstated upon the receipt of evidence that the licensee has successfully completed the required courses. Completion of the courses may be counted toward fulfillment of the continuing education requirements governed by Section 1645.

SEC. 13. Section 1648.15 is added to the Business and Professions Code, to read:

1648.15. The fact sheet set forth by Section 1648.10 shall be provided by a dentist to every new patient and to patients of record prior to the performance of dental restoration work. The dentist needs to

provide the fact sheet to each patient only once pursuant to the previous requirements of this section. An acknowledgment of the receipt of the fact sheet by the patient shall be signed by the patient and a copy of it shall be placed in the patient's dental record. If updates to the fact sheet are made by the board, the updated fact sheet shall be given to patients in the manner provided above. A dentist shall also provide the fact sheet to the patient upon request.

SEC. 14. Section 1742 of the Business and Professions Code is amended to read:

1742. (a) There is within the jurisdiction of the board a Committee on Dental Auxiliaries.

(b) The Committee on Dental Auxiliaries shall have the following areas of responsibility and duties:

(1) The committee shall have the following duties and authority related to education programs and curriculum:

(A) Shall evaluate all dental auxiliary programs applying for board approval in accordance with board rules governing the programs.

(B) May appoint board members to any evaluation committee. Board members so appointed shall not make a final decision on the issue of program or course approval.

(C) Shall report and make recommendations to the board as to whether a program or course qualifies for approval. The board retains the final authority to grant or deny approval to a program or course.

(D) Shall review and document any alleged deficiencies that might warrant board action to withdraw or revoke approval of a program or course, at the request of the board.

(E) May review and document any alleged deficiencies that might warrant board action to withdraw or revoke approval of a program or course, at its own initiation.

(2) The committee shall have the following duties and authority related to applications:

(A) Shall review and evaluate all applications for licensure in the various dental auxiliary categories to ascertain whether a candidate meets the appropriate licensing requirements specified by statute and board regulations.

(B) Shall maintain application records, cashier application fees, and perform any other ministerial tasks as are incidental to the application process.

(C) May delegate any or all of the functions in this paragraph to its staff.

(D) Shall issue auxiliary licenses in all cases, except where there is a question as to a licensing requirement. The board retains final authority to interpret any licensing requirement. If a question arises in the area of

interpreting any licensing requirement, it shall be presented by the committee to the board for resolution.

(3) The committee shall have the following duties and authority regarding examinations:

(A) Shall advise the board as to the type of license examination it deems appropriate for the various dental auxiliary license categories.

(B) Shall, at the direction of the board, develop or cause to be developed, administer, or both, examinations in accordance with the board's instructions and periodically report to the board on the progress of those examinations. The following shall apply to the examination procedure:

(i) The examination shall be submitted to the board for its approval prior to its initial administration.

(ii) Once an examination has been approved by the board, no further approval is required unless a major modification is made to the examination.

(iii) The committee shall report to the board on the results of each examination and shall, where appropriate, recommend pass points.

(iv) The board shall set pass points for all dental auxiliary licensing examinations.

(C) May appoint board members to any examination committee established pursuant to subparagraph (B).

(4) The committee shall periodically report and make recommendations to the board concerning the level of fees for dental auxiliaries and the need for any legislative fee increase. However, the board retains final authority to set all fees.

(5) The committee shall be responsible for all aspects of the license renewal process, which shall be accomplished in accordance with this chapter and board regulations. The committee may delegate any or all of its functions under this paragraph to its staff.

(6) The committee shall have no authority with respect to the approval of continuing education providers; the board retains all of this authority.

(7) The committee shall advise the board as to appropriate standards of conduct for auxiliaries, the proper ordering of enforcement priorities, and any other enforcement-related matters that the board may, in the future, delegate to the committee. The board shall retain all authority with respect to the enforcement actions, including, but not limited to, complaint resolution, investigation, and disciplinary action against auxiliaries.

(8) The committee shall have the following duties regarding regulations:

(A) To review and evaluate all suggestions or requests for regulatory changes related to dental auxiliaries.

(B) To report and make recommendations to the board, after consultation with departmental legal counsel and the board's executive officer.

(C) To include in any report regarding a proposed regulatory change, at a minimum, the specific language of the proposed changes and the reasons for and facts supporting the need for the change. The board has the final rulemaking authority.

(c) 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. The repeal of this section renders the committee subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 15. Section 1749 of the Business and Professions Code is amended to read:

1749. (a) The committee shall meet at least four times annually. The committee shall conduct additional meetings as are necessary in appropriate locations to conclude its business. Special meetings may be held at the time and place the committee designates.

(b) Notice of each meeting of the committee shall be given at least two weeks in advance to those persons and organizations who express an interest in receiving such notification.

(c) The committee shall obtain permission of the director to meet more than six times annually. The director shall approve the meetings that are necessary for the committee to fulfill its legal responsibilities.

SEC. 16. Section 1753 of the Business and Professions Code is amended to read:

1753. The board shall license as a registered dental assistant a person who submits written evidence, satisfactory to the board, of either one of the following requirements:

(a) Graduation from an educational program in dental assisting approved by the board, and satisfactory performance on a written examination required by the board. On and after January 1, 1984, every applicant seeking licensure as a registered dental assistant pursuant to this subdivision shall provide evidence of his or her satisfactory performance on a written and practical examination required by the board.

(b) Satisfactory work experience of more than 12 months as a dental assistant in California or another state and satisfactory performance on a written and practical examination required by the board. The board shall give credit toward the 12 months work experience referred to in this subdivision to persons who have graduated from a dental assisting program in a postsecondary institution approved by the Department of Education or in a secondary institution, regional occupational center, or

regional occupational program, that are not, however, approved by the board pursuant to subdivision (a). The credit shall equal the total weeks spent in classroom training and internship on a week-for-week basis not to exceed 16 weeks. The board, in cooperation with the Superintendent of Public Instruction, shall establish the minimum criteria for the curriculum of nonboard-approved programs. Additionally, the board shall notify those programs only if the program's curriculum does not meet established minimum criteria, as established for board-approved registered dental assistant programs, except any requirement that the program be given in a postsecondary institution. Graduates of programs not meeting established minimum criteria shall not qualify for satisfactory work experience as defined by this section.

SEC. 17. Section 1753.5 is added to the Business and Professions Code, to read:

1753.5. In addition to the requirements of Section 1753, each applicant for registered dental assistant licensure on or after July 1, 2002, shall provide evidence of having successfully completed board-approved courses in radiation safety and coronal polishing as a condition of licensure. The length and content of the courses shall be governed by applicable board regulations.

SEC. 18. Section 2.5 of this bill shall become operative only if AB 447 is enacted and becomes effective on or before January 1, 2002, in which case Section 2 of this bill shall not become operative.

CHAPTER 533

An act to amend Section 214.02 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 214.02 of the Revenue and Taxation Code is amended to read:

214.02. (a) Except as provided in subdivision (b) or (c), property that is used exclusively for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or open-space lands used solely for recreation and for the enjoyment of scenic beauty, is open to the general public subject to reasonable restrictions concerning the needs of the land, and is owned and operated by a scientific or charitable fund, foundation or

corporation, the primary interest of which is to preserve those natural areas, and that meets all the requirements of Section 214, shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the Constitution of the State of California and Section 214.

(b) The exemption provided by this section shall not apply to any property of an organization that owns in the aggregate 30,000 acres or more in one county that were exempt under this section prior to March 1, 1983, or that are proposed to be exempt, unless the nonprofit organization that holds the property is constituted in such a way as to be fully independent of the owner of any taxable real property that is adjacent to the property otherwise qualifying for tax exemption under this section. For purposes of this section, the nonprofit organization that holds the property shall be considered fully independent if the exempt property is not used or operated by that organization or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor or bondholder of the exempt organization or operator, or the owner of any adjacent property, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(c) The exemption provided by this section shall not apply to property that is reserved for future development.

(d) This section shall be operative from the lien date in 1983 to and including the lien date in 2012, after which date this section shall become inoperative, and as of January 1, 2013, this section is repealed.

SEC. 2. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 534

An act to add Sections 21080.35 and 21091.5 to the Public Resources Code, and to amend Section 21661.6 of, and to add Section 21020 to, the Public Utilities Code, relating to environmental quality.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 21080.35 is added to the Public Resources Code, to read:

21080.35. For the purposes of Section 21069, the phrase ''carrying out or approving a project'' shall include the carrying out or approval of a plan for a project that expands or enlarges an existing publicly owned airport by any political subdivision, as described in Section 21661.6 of the Public Utilities Code.

SEC. 2. Section 21091.5 is added to the Public Resources Code, to read:

21091.5. Notwithstanding subdivision (a) of Section 21091, or any other provision of this division, the public review period for a draft environmental impact report prepared for a proposed project involving the expansion or enlargement of a publicly owned airport requiring the acquisition of any tide and submerged lands or other lands subject to the public trust for commerce, navigation, or fisheries, or any interest therein, shall be not less than 120 days.

SEC. 3. Section 21020 is added to the Public Utilities Code, to read:

21020. ''Land'' includes tide and submerged lands or other lands subject to the public trust for commerce, navigation, or fisheries.

SEC. 4. Section 21661.6 of the Public Utilities Code is amended to read:

21661.6. (a) Prior to the acquisition of land or any interest therein, including tide and submerged lands or other lands subject to the public trust for commerce, navigation, or fisheries, by any political subdivision for the purpose of expanding or enlarging any existing publicly owned airport, the acquiring entity shall submit a plan of that expansion or enlargement to the board of supervisors of the county, or the city council of the city, in which the property proposed to be acquired is located.

(b) The plan shall show in detail the airport-related uses and other uses proposed for the property to be acquired.

(c) The board of supervisors or the city council, as the case may be, shall, upon notice, conduct a public hearing on the plan, and shall thereafter approve or disapprove the plan.

(d) Upon approval of the plan, the proposed acquisition of property may begin.

(e) The use of property so acquired shall thereafter conform to the approved plan, and any variance from that plan, or changes proposed therein, shall first be approved by the appropriate board of supervisors or city council after a public hearing on the subject of the variance or plan change.

(f) The requirements of this section are in addition to any other requirements of law relating to construction or expansion of airports.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 535

An act to amend Sections 12209, 17053.57, and 23657 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 12209 of the Revenue and Taxation Code is amended to read:

12209. (a) For each year beginning on or after January 1, 1999, and before January 1, 2007, there shall be allowed as a credit against the amount of tax, as defined in Section 28 of Article XIII of the California Constitution, an amount equal to 20 percent of the amount of each qualified investment made by a taxpayer during the year into a community development financial institution.

(b) For purposes of determining any tax that may be imposed under Section 685 of the Insurance Code on a taxpayer not organized under the laws of this state, the amount of the credit allowed by subdivision (a) shall be treated as a tax paid under Section 12201 or Section 28 of Article XIII of the California Constitution.

(c) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the California Organized Investment Network, or its successor within the Department of Insurance, certifies that the investment described in subdivision (a) qualifies for the credit under this section and certifies the total amount of the credit allocated to the taxpayer pursuant to this section. The aggregate amount of qualified investments made by all taxpayers pursuant to this section, Section 17053.57, and Section 23657 shall not exceed ten million dollars ($10,000,000) for each calendar year. However, if the aggregate amount of qualified investments made in any calendar year is less than ten million dollars ($10,000,000), the difference may be carried over to the next year, and any succeeding year

during which this section remains in effect, and added to the aggregate amount authorized for those years.

(d) The community development financial institution shall do all of the following:

(1) Apply to the Department of Insurance, California Organized Investment Network, or its successor, for certification of its status as a community development financial institution.

(2) Apply to the Department of Insurance, California Organized Investment Network, or its successor, on behalf of the taxpayer for certification of the amount of the investment and the credit amount allocated to the taxpayer, obtain the certification, and retain a copy of the certification.

(3) Obtain the taxpayer's California company identification number for tax administration purposes and provide this information to the Department of Insurance, California Organized Investment Network, or its successor, with the application required in paragraph (2).

(4) Provide an annual listing to the State Board of Equalization, in the form and manner agreed upon by the State Board of Equalization and the Department of Insurance, California Organized Investment Network, or its successor, of the names and taxpayer's California company identification numbers of any taxpayer who makes any withdrawal or partial withdrawal of a qualified investment before the expiration of 60 months from the date of the qualified investment.

(e) The Department of Insurance, California Organized Investment Network, or any successor thereof, shall do all of the following:

(1) Accept applications for certification from financial institutions and issue certificates that the applicant is a community development financial institution qualified to receive qualified investments.

(2) Accept applications for certification from any community development financial institution on behalf of the taxpayer and issue certificates to taxpayers in an aggregate amount that shall not exceed the limit specified in subdivision (c). The certificate shall include the amount eligible to be made as an investment that qualifies for the credit and the total amount of the credit to which the taxpayer is entitled for the year. Certificates shall be issued in the order that the applications are received.

(3) Provide an annual listing to the State Board of Equalization, in the form or manner agreed upon by the State Board of Equalization and the Department of Insurance, California Organized Investment Network, or its successor, of the taxpayers who were issued certificates, their respective National Association of Insurance Commissioners company number and employer's tax identification number, the amount of the qualified investment made by each taxpayer, and the total amount of qualified investments.

(f) For purposes of this section:

(1) ''Qualified investment'' means a deposit or loan that does not earn interest, or an equity investment, or an equity-like debt instrument that conforms to the specifications for these instruments as prescribed by the United States Department of the Treasury, Community Development Financial Institutions Fund, or its, successor. All qualified investments must be equal to or greater than fifty thousand dollars ($50,000) and made for a minimum duration of 60 months.

(2) ''Community development financial institution'' means a private financial institution located in this state that is certified by the Department of Insurance, California Organized Investment Network, or its successor, that has community development as its primary mission, and that lends in urban, rural, or reservation-based communities in this state. A community development financial institution may include a community development bank, a community development loan fund, a community development credit union, a microenterprise fund, a community development corporation-based lender, and a community development venture fund.

(g) (1) If a qualified investment is withdrawn before the end of the 60th month and not reinvested in another community development financial institution within 60 days, there shall be added to the ''tax,'' as defined in Section 28 of Article XIII of the California Constitution, for the year in which the withdrawal occurs, the entire amount of any credit previously allowed under this section.

(2) If a qualified investment is reduced before the end of the 60th month, but not below fifty thousand dollars ($50,000), there shall be added to the ''tax,'' as defined in Section 28 of Article XIII of the California Constitution, for the taxable year in which the reduction occurs, an amount equal to 20 percent of the total reduction for the year.

(h) In the case where the credit allowed by this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' for the next four years, or until the credit has been exhausted, whichever occurs first.

(i) The State Board of Equalization shall, as requested by the Department of Insurance, California Organized Investment Network or its successor, advise and assist in the administration of this section.

(j) This section shall remain in effect only until December 31, 2007, and as of that date is repealed.

SEC. 2. Section 17053.57 of the Revenue and Taxation Code is amended to read:

17053.57. (a) For each taxable year beginning on or after January 1, 1997, and before January 1, 2007, there shall be allowed as a credit against the amount of ''net tax,'' as defined in Section 17039, an amount equal to 20 percent of the amount of each qualified investment made by

a taxpayer during the taxable year into a community development financial institution.

(b) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the California Organized Investment Network, or its successor within the Department of Insurance, certifies that the investment described in subdivision (a) qualifies for the credit under this section and certifies the total amount of the credit allocated to the taxpayer pursuant to this section. The aggregate amount of qualified investments made by all taxpayers pursuant to this section, Section 12209, and Section 23657 shall not exceed ten million dollars ($10,000,000) for each calendar year. However, if the aggregate amount of qualified investments made in any calendar year is less than ten million dollars ($10,000,000), the difference may be carried over to the next year, and any succeeding year during which this section remains in effect, and added to the aggregate amount authorized for those years.

(c) The Community Development Financial Institution shall do all of the following:

(1) Apply to the Department of Insurance, California Organized Investment Network, or its successor, for certification of its status as a Community Development Financial Institution.

(2) Apply to the Department of Insurance, California Organized Investment Network, or its successor, on behalf of the taxpayer for certification of the amount of the investment and the credit amount allocated to the taxpayer, obtain the certification, and retain a copy of the certification.

(3) Obtain the taxpayer's identification number, or in the case of a partnership, the taxpayer identification numbers of all the partners for tax administration purposes and provide this information to the Department of Insurance, California Organized Investment Network, or its successor, with the application required in paragraph (2).

(4) Provide an annual listing to the Franchise Tax Board, in the form and manner agreed upon by the Franchise Tax Board and the Department of Insurance, California Organized Investment Network, or its successor, of the names and taxpayer identification numbers of any taxpayer who makes any withdrawal or partial withdrawal of a qualified investment before the expiration of 60 months from the date of the qualified investment.

(d) The Department of Insurance, California Organized Investment Network, or any successor thereof, shall do all of the following:

(1) Accept applications for certification from financial institutions and issue certificates that the applicant is a Community Development Financial Institution qualified to receive qualified investments.

(2) Accept applications for certification from any Community Development Financial Institution on behalf of the taxpayer and issue certificates to taxpayers in an aggregate amount that shall not exceed the limit specified in subdivision (b). The certificate shall include the amount eligible to be made as an investment that qualifies for the credit and the total amount of the credit to which the taxpayer is entitled for the taxable year. Certificates shall be issued in the order in which the applications are received.

(3) Provide an annual listing to the Franchise Tax Board, in a form or manner agreed upon by the Franchise Tax Board and the Department of Insurance, California Organized Investment Network, or its successor of the taxpayers who were issued certificates, their respective tax identification numbers, the amount of the qualified investment made by each taxpayer, and the total amount of all qualified investments.

(e) For purposes of this section:

(1) ''Qualified investment'' means a deposit or loan that does not earn interest, or an equity investment, or an equity-like debt instrument that conforms to the specifications for these instruments as prescribed by the United States Department of the Treasury, Community Development Financial Institutions Fund, or its successor. All qualified investments must be equal to or greater than fifty thousand dollars ($50,000) and made for a minimum duration of 60 months.

(2) ''Community development financial institution'' means a private financial institution located in this state that is certified by the Department of Insurance, California Organized Investment Network, or its successor, that has community development as its primary mission, and that lends in urban, rural, or reservation-based communities in this state. A community development financial institution may include a community development bank, a community development loan fund, a community development credit union, a microenterprise fund, a community development corporation-based lender, and a community development venture fund.

(f) (1) If a qualified investment is withdrawn before the end of the 60th month and not reinvested in another Community Development Financial Institution within 60 days, there shall be added to the ''net tax,'' as defined in Section 17039, for the taxable year in which the withdrawal occurs, the entire amount of any credit previously allowed under this section.

(2) If a qualified investment is reduced before the end of the 60th month, but not below fifty thousand dollars ($50,000), there shall be added to the ''net tax,'' as defined in Section 17039, for the taxable year in which the reduction occurs, an amount equal to 20 percent of the total reduction for the taxable year.

(g) In the case where the credit allowed by this section exceeds the ''net tax,'' the excess may be carried over to reduce the ''net tax'' for the next four taxable years, or until the credit has been exhausted, whichever occurs first.

(h) The Franchise Tax Board shall, as requested by the Department of Insurance, California Organized Investment Network or its successor, advise and assist in the administration of this section.

(i) This section shall remain in effect only until December 1, 2007, and as of that date is repealed.

SEC. 3. Section 23657 of the Revenue and Taxation Code is amended to read:

23657. (a) For each taxable year beginning on or after January 1, 1997, and before January 1, 2007, there shall be allowed as a credit against the amount of ''tax,'' as defined in Section 23036, an amount equal to 20 percent of the amount of each qualified investment made by a taxpayer during the taxable year into a community development financial institution.

(b) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the California Organized Investment Network, or its successor within the Department of Insurance, certifies that the investment described in subdivision (a) qualifies for the credit under this section and certifies the total amount of the credit allocated to the taxpayer pursuant to this section. The aggregate amount of qualified investments made by all taxpayers pursuant to this section, Section 12209, and Section 17053.57 shall not exceed ten million dollars ($10,000,000) for each calendar year. However, if the aggregate amount of qualified investments made in any calendar year is less than ten million dollars ($10,000,000), the difference may be carried over to the next year, and any succeeding year during which this section remains in effect, and added to the aggregate amount authorized for those years.

(c) The Community Development Financial Institution shall do all of the following:

(1) Apply to the Department of Insurance, California Organized Investment Network, or its successor, for certification of its status as a Community Development Financial Institution.

(2) Apply to the Department of Insurance, California Organized Investment Network, or its successor, on behalf of the taxpayer, for certification of the amount of the investment and the credit amount allocated to the taxpayer, obtain the certification, and retain a copy of the certification.

(3) Obtain the taxpayer's identification number, or in the case of an ''S corporation,'' the taxpayer identification numbers of all the shareholders for tax administration purposes and provide this

information to the Department of Insurance, California Organized Investment Network, or its successor, with the application required in paragraph (2).

(4) Provide an annual listing to the Franchise Tax Board, in the form and manner agreed upon by the Franchise Tax Board and the Department of Insurance, California Organized Investment Network, or its successor, of the names and taxpayer identification numbers of any taxpayer who makes any withdrawal or partial withdrawal of a qualified investment before the expiration of 60 months from the date of the qualified investment.

(d) The Department of Insurance, California Organized Investment Network, or any successor thereof, shall do all of the following:

(1) Accept applications for certification from financial institutions and issue certificates that the applicant is a Community Development Financial Institution qualified to receive qualified investments.

(2) Accept applications for certification from any Community Development Financial Institution on behalf of the taxpayer and issue certificates to taxpayers in an aggregate amount that shall not exceed the limit specified in subdivision (b). The certificate shall include the amount eligible to be made as an investment that qualifies for the credit and the total amount of the credit to which the taxpayer is entitled for the taxable year. Certificates shall be issued in the order that the applications are received.

(3) Provide an annual listing to the Franchise Tax Board, in the form or manner agreed upon by the Franchise Tax Board and the Department of Insurance, California Organized Investment Network, or its successor, of the taxpayers who were issued certificates, their respective tax identification numbers, the amount of the qualified investment made by each taxpayer, and the total amount of all qualified investments.

(e) For purposes of this section:

(1) ''Qualified investment'' means a deposit or loan that does not earn interest, or an equity investment, or an equity-like debt instrument that conforms to the specifications for these instruments as prescribed by the United States Department of the Treasury, Community Development Financial Institutions Fund, or its successor. All qualified investments must be equal to or greater than fifty thousand dollars ($50,000) and made for a minimum duration of 60 months.

(2) ''Community development financial institution'' means a private financial institution located in this state that is certified by the Department of Insurance, California Organized Investment Network, or its successor, that has community development as its primary mission, and that lends in urban, rural, or reservation-based communities in this state. A community development financial institution may include a community development bank, a community development loan fund, a

community development credit union, a microenterprise fund, a community development corporation-based lender, and a community development venture fund.

(f) (1) If a qualified investment is withdrawn before the end of the 60th month and not reinvested in another Community Development Financial Institution within 60 days, there shall be added to the ''tax,'' as defined in Section 23036, for the taxable year in which the withdrawal occurs, the entire amount of any credit previously allowed under this section.

(2) If a qualified investment is reduced before the end of the 60th month, but not below fifty thousand dollars ($50,000), there shall be added to the ''tax,'' as defined in Section 23036, for the taxable year in which the reduction occurs, an amount equal to 20 percent of the total reduction for the taxable year.

(g) In the case where the credit allowed by this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' for the next four taxable years, or until the credit has been exhausted, whichever occurs first.

(h) The Franchise Tax Board shall, as requested by the Department of Insurance, California Organized Investment Network or its successor, advise and assist in the administration of this section.

(i) This section shall remain in effect only until December 1, 2007, and as of that date is repealed.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 536

An act to add and repeal Chapter 8.5 (commencing with Section 56867) of Part 30 of the Education Code, relating to special education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Chapter 8.5 (commencing with Section 56867) is added to Part 30 of the Education Code, to read:

CHAPTER 8.5 SPECIAL EDUCATION AT THE YOUTH AUTHORITY

56867. (a) The State Department of Education is responsible for monitoring the Department of the Youth Authority for compliance with state and federal laws and regulations regarding special education.

(b) Notwithstanding any other provision of law, the State Department of Education and the California State University shall enter into an interagency agreement under which the Center for the Study of Correctional Education, located on the California State University, San Bernardino campus, shall provide technical assistance to the State Department of Education regarding compliance with state and federal laws and regulations regarding special education at the Department of the Youth Authority.

(c) The State Department of Education shall prepare the interagency agreement in consultation with the California State University, San Bernardino, and the superintendent of education for the Department of the Youth Authority. The interagency agreement shall require the center to provide all of the following services to the Special Education Division of the State Department of Education:

(1) Assistance in providing reviews and assessments of special education at each schoolsite in the Department of the Youth Authority.

(2) Assistance in drafting reports of findings for each review.

(3) Assistance in drafting corrective action plans, based on preliminary findings of noncompliance that include specific suggested outcomes to achieve compliance, and other instruments conveying recommendations and suggestions resulting from reviews and assessments.

(4) Onsite technical assistance and support to the Department of the Youth Authority, as authorized by the Special Education Division of the State Department of Education.

(5) Identifying and developing suggested draft protocols and best practices for providing special education services in correctional settings.

(6) Developing suggested draft protocols and a suggested draft best practices model for providing monitoring and technical assistance services for special education in youthful correctional settings.

(7) Evaluating the training needs and priorities of educational personnel serving wards with exceptional needs at the Department of the Youth Authority.

(8) Reviewing the Department of the Youth Authority's current special education local plan, policies, procedures, and forms, for compliance with state and federal special education law and, with the approval of the State Department of Education, providing suggested

revisions as necessary to provide better compliance and to better reflect the best practices in a correctional setting.

(d) Technical assistance provided pursuant to this section shall reflect existing or subsequently adopted standards for state and federal compliance. Reviews conducted pursuant to this section shall include, but not be limited to, assessments of the following special education services for wards at the Department of the Youth authority with exceptional needs:

(1) Identification and assessment of wards with exceptional needs.

(2) Parent notification, consent, and participation.

(3) Individual education plan development and content, including behavior intervention and transition plans.

(4) Assessment of ward progress.

(5) Provision of services in the least restrictive environment maximizing inclusion.

(6) Services to pupils who are not proficient in English.

(7) Observance of procedural safeguards and compliance with state and federal law.

(e) Commencing no later than one year after entering into the interagency agreement specified in this section and annually thereafter until termination of the agreement, with the assistance of the center, the State Department of Education shall provide interim status reports of the services received from the center pursuant to this section to the Department of Finance and the Legislature.

(f) No later than December 1, 2006, the State Department of Education shall submit a report to the Legislature on the usefulness of the services received from the center pursuant to the interagency agreement required by this section.

(g) The interagency agreement required by this section shall be funded through an appropriation made in the annual Budget Act with federal funds made available for state agencies under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following).

(h) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

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

In order to address the need to provide special education services to which youths in the California Youth Authority are entitled, it is necessary that this act take effect immediately.

CHAPTER 537

An act to add Section 30519.2 to the Public Resources Code, relating to coastal planning, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 30519.2 is added to the Public Resources Code, to read:

30519.2. (a) (1) This subdivision shall only apply to territory described in paragraph (2) and defined as the ''Annexed Area.''

(2) For purposes of this section, ''Annexed Area'' means the territory consisting of approximately 5,450 acres in the County of Orange bounded to the north by the inland boundary of the coastal zone, to the east by the western boundary of Crystal Cove State Park, to the south by the state's outer limit of jurisdiction over the Pacific Ocean, and to the west by the city limits of the City of Newport Beach.

(3) This subdivision shall be operative upon the effective date of the annexation of all or part of the Annexed Area by the City of Newport Beach.

(4) Upon the recordation of a certificate of completion of any reorganization or change of organization that results in the annexation of all or part of the Annexed Area by the City of Newport Beach, both of the following shall occur:

(A) The local coastal program applicable to any part of the Annexed Area shall continue to be the certified local coastal program for the County of Orange.

(B) The County of Orange shall continue to exercise all development review authority described in Section 30519, as delegated to it by the commission consistent with the certified local coastal program of the County of Orange for the Annexed Area.

(5) If, at any time after the recordation of the certificate of completion of the annexation of the Annexed Area, the City of Newport Beach elects to assume coastal management responsibility for the Annexed Area, the city may begin preparation of a local coastal program for that area. The

City of Newport Beach may adopt provisions of the County of Orange's certified local coastal program that apply to the Annexed Area. All of the procedures for the preparation, approval, and certification of a local coastal program set forth in this division, and any applicable regulations adopted by the commission, shall apply to the preparation, approval, and certification of a local coastal program for the Annexed Area.

(6) If the City of Newport Beach obtains certification of a local coastal program for the Annexed Area, the city shall, upon the effective date of that certification, exercise all of the authority granted to a local government with a certified local coastal program, and the provisions of paragraph (4) shall become inoperative.

(b) On or before June 30, 2003, or 24 months after the annexation of the Annexed Area, whichever event occurs first, the City of Newport Beach shall submit to the commission for approval and certification the city's local coastal program for all of the geographic area within the coastal zone and the city's corporate boundaries as of June 30, 2000. The submittal may include a local coastal program segment for the Annexed Area that will implement the local coastal program for the County of Orange as described in paragraph (4) of subdivision (a).

(c) If the City of Newport Beach fails to submit a local coastal program to the commission for approval and certification pursuant to subdivision (b) or does not have an effectively certified local coastal program within six months after the commission's approval of the local coastal program, the City of Newport Beach shall submit a monthly late fee of one thousand dollars ($1,000) to be deposited into the Violation Remediation Account of the Coastal Conservancy Fund, to be expended in accordance with the purposes of Section 30823. The City of Newport Beach shall pay the monthly late fee until the time that the city commences implementation of an effectively certified local coastal program. The city may not recover the cost of the late fee from any owner or lessee of property in the coastal zone.

SEC. 2. The Legislature finds and declares that, due to the unique circumstances applicable to the territory generally known as the Annexed Area within the County of Orange relating to the certified local coastal program for the county, a statute of general applicability cannot be made applicable within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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 deciding to annex territory in the coastal zone, as defined in Section 30103 of the Public Resources Code, generally known as the ''Annexed Area,'' the City of Newport Beach seeks to preserve the open-space dedications and entitlements protected by an existing certified local coastal program. At the same time, in order to effectively fund police and fire protection services among municipal services to the area, the city needs the property tax revenues from the Annexed Area to be allocated to the city for the 2002–03 fiscal year.

CHAPTER 538

An act to add Chapter 8 (commencing with Section 104324) to Part 1 of Division 103 of the Health and Safety Code, relating to environmental health.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

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

(a) In its fight against chronic diseases, including birth defects, that are related to the environment, California must give communities and public health professionals solid, reliable information, which is the most basic tool to undertake the prevention of these diseases.

(b) Data generated by tracking and monitoring chronic diseases are critical to all of the following:

(1) Knowing where and how to put in place the most effective strategies to prevent diseases.

(2) Assessing the contribution of diseases to disabilities and premature mortality.

(3) Measuring the effectiveness of prevention strategies.

(4) Generating hypotheses that may lead to new scientific knowledge about the causes of, and most effective ways to fight, chronic diseases.

(c) To examine the relationships between chronic diseases and the environment, the state should do all of the following:

(1) Survey a cross section of the overall population in California, including chronically ill patients, and their environmental exposures.

(2) Conduct biomonitoring to measure pollutant levels in blood and urine samples for a cross section of the population.

(3) Link data created by the survey to other health and environmental data bases, such as birth certificates, neonatal blood tests, hospital admissions, emergency room visits, and mortality.

(4) Require state government agencies and universities to examine whether, and the extent to which, past environmental exposures might increase the risk of several chronic diseases, including birth defects, heart disease, cancer, asthma and other respiratory conditions, Parkinson's disease, Alzheimer's disease, and other neurological degenerative diseases.

(d) The initial investment to establish this type of a data collection and analysis infrastructure to develop preventive strategies would constitute a small fraction of the annual costs of controlling chronic diseases in California.

(e) It is the intent of the Legislature in enacting this act to form a public-private partnership to create an environmental health and chronic disease surveillance system to do all of the following:

(1) Provide a data base, with linkages to the survey, biomonitoring, and disease type, to assess the impact of environmental contaminants on the human body and, to the extent possible, regional data to assess geographic variability.

(2) Track and evaluate a variety of chronic diseases in relation to environmental exposures, including state and local data on actual incidences of chronic disease.

(3) Make data available to the public in an accessible and useful format.

(4) Ultimately provide information to the relevant board, department, or office within the California Environmental Protection Agency and to the relevant branch or division within the State Department of Health Services for the development of appropriate preventive strategies.

SEC. 2. Chapter 8 (commencing with Section 104324) is added to Part 1 of Division 103 of the Health and Safety Code, to read:

CHAPTER 8. ENVIRONMENTAL HEALTH SURVEILLANCE SYSTEM

104324. (a) It is the intent of the Legislature to establish an Environmental Health Surveillance System (EHSS) in accordance with this chapter. The purpose of the EHSS shall be to establish ongoing surveillance of the environmental exposures and diseases affecting Californians, with a focus on prevalence and determinants of chronic diseases. The Regents of the University of California are requested to cooperate with the division and the office in establishing the EHSS.

(b) The objectives of the EHSS are as follows:

(1) To track and evaluate a variety of chronic diseases in relation to environmental exposures.

(2) To allow both government and university investigators and public health officials to assess the impact of environmental contaminants on the human body.

(3) To provide information to the relevant board, department, or office within the California Environmental Protection Agency and to the relevant branch or division within the State Department of Health Services for the development of appropriate preventive strategies.

104324.2. (a) On or before July 1, 2002, the Division of Environmental and Occupational Disease Control in the State Department of Health Services, in consultation with the Office of Environmental Health Hazard Assessment, shall create a working group of technical experts, including experts who have knowledge of the sensitivity and exposure of children, women of child-bearing age, seniors, and disparately affected populations to environmental hazards, to do all of the following:

(1) Develop possible approaches to establishing the EHSS, including an estimated cost for each approach.

(2) Prepare and submit a report to the State Department of Health Services and, the Office of Environmental Health Hazard Assessment, and appropriate legislative committees, by July 1, 2003, on the possible approaches to establishing the EHSS, including an estimated cost of each approach, and the recommended approach to establishing an EHSS for California.

(3) Develop the health and environmental measurements needed to do both of the following:

(A) Obtain an ongoing picture of the health of Californians.

(B) Establish a data base that may facilitate the examination of the relationship between chronic diseases, including birth defects, and the environment.

(b) The Regents of the University of California are requested to cooperate with the division and the office in creating the work group described in this section.

104324.3. It is the intent of the Legislature to enact legislation that would require the adoption and implementation, by specified dates, of one of the approaches recommended by the working group pursuant to Section 104324.2.

104324.5. This chapter shall only apply to the University of California to the extent that the Regents of the University of California make it applicable by appropriate resolution.

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CHAPTER 539

An act to amend Sections 285, 286, 296, 297, 331, 331.1, 331.2, 672, and 9250.15 of, and to add Sections 4004.7, 8058, 9259.3, and 9259.5 to, the Vehicle Code, relating to vehicles.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 285 of the Vehicle Code is amended to read:

285. ''Dealer'' is a person not otherwise expressly excluded by Section 286 who:

(a) For commission, money, or other thing of value, sells, exchanges, buys, or offers for sale, negotiates or attempts to negotiate, a sale or exchange of an interest in, a vehicle subject to registration, a motorcycle subject to identification under this code, or a trailer subject to identification pursuant to Section 5014.1, or induces or attempts to induce any person to buy or exchange an interest in a vehicle and, who receives or expects to receive a commission, money, brokerage fees, profit, or any other thing of value, from either the seller or purchaser of the vehicle.

(b) Is engaged wholly or in part in the business of selling vehicles or buying or taking in trade, vehicles for the purpose of resale, selling, or offering for sale, or consigned to be sold, or otherwise dealing in vehicles, whether or not the vehicles are owned by the person.

SEC. 2. Section 286 of the Vehicle Code is amended to read:

286. The term ''dealer'' does not include any of the following:

(a) Insurance companies, banks, finance companies, public officials, or any other person coming into possession of vehicles in the regular course of business, who sells vehicles under a contractual right or obligation, in performance of an official duty, or in authority of any court of law, if the sale is for the purpose of saving the seller from loss or pursuant to the authority of a court.

(b) Persons who sell or distribute vehicles of a type subject to registration or trailers subject to identification pursuant to Section 5014.1 for a manufacturer to vehicle dealers licensed under this code, or who are employed by manufacturers or distributors to promote the sale of vehicles dealt in by those manufacturers or distributors. However, any of those persons who also sell vehicles at retail are vehicle dealers and are subject to this code.

(c) Persons regularly employed as salespersons by vehicle dealers licensed under this code while acting within the scope of that employment.

(d) Persons engaged exclusively in the bona fide business of exporting vehicles or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States, if no federal excise tax is legally payable or refundable on any of the transactions. Persons not engaged exclusively in the bona fide business of exporting vehicles, but who are engaged in the business of soliciting orders for the sale and delivery of vehicles, outside the territorial limits of the United States are exempt from licensure as dealers only if their sales of vehicles produce less than 10 percent of their total gross revenue from all business transacted.

(e) Persons not engaged in the purchase or sale of vehicles as a business, who dispose of any vehicle acquired and used in good faith, for their own personal use, or for use in their business, and not for the purpose of avoiding the provisions of this code.

(f) Persons who are engaged in the purchase, sale, or exchange of vehicles, other than motorcycles subject to identification under this code, which are not intended for use on the highways.

(g) Persons temporarily retained as auctioneers solely for the purpose of disposing of vehicle stock inventories by means of public auction on behalf of the owners at the owners' place of business, or as otherwise approved by the department, if intermediate physical possession or control of, or an ownership interest in, the inventory is not conveyed to the persons so retained.

(h) Persons who are engaged exclusively in the business of purchasing, selling, servicing, or exchanging racing vehicles, parts for racing vehicles, and trailers designed and intended by the manufacturer to be used exclusively for carrying racing vehicles. For purposes of this subdivision, ''racing vehicle'' means a motor vehicle of a type used exclusively in a contest of speed or in a competitive trial of speed which is not intended for use on the highways.

(i) Any person who is a lessor.

(j) Any person who is a renter.

(k) Any salvage pool.

(*l*) Any yacht broker who is subject to the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code) and who sells used boat trailers in conjunction with the sale of a vessel.

(m) Any licensed automobile dismantler who sells vehicles that have been reported for dismantling as provided in Section 11520.

(n) The Director of Corrections when selling vehicles pursuant to Section 2813.5 of the Penal Code.

(o) Any public or private nonprofit charitable, religious, or educational institution or organization that sells vehicles if all of the following conditions are met:

(1) The proceeds of the sale of the vehicles are retained by that institution or organization for its charitable, religious, or educational purposes.

(2) The vehicles sold were donated to the institution or organization.

(3) They meet all of the applicable equipment requirements of Division 12 (commencing with Section 24000) and have been issued a certificate pursuant to Section 44015 of the Health and Safety Code.

(4) The institution or organization has qualified for state tax-exempt status under Section 23701d of the Revenue and Taxation Code, and federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(p) Any motor club, as defined in Section 12142 of the Insurance Code, that does not arrange or negotiate individual motor vehicle purchase transactions on behalf of its members but refers members to a new motor vehicle dealer for the purchase of a new motor vehicle and does not receive a fee from the dealer contingent upon the sale of the vehicle.

SEC. 2.5. Section 286 of the Vehicle Code is amended to read:

286. The term ''dealer'' does not include any of the following:

(a) Insurance companies, banks, finance companies, public officials, or any other person coming into possession of vehicles in the regular course of business, who sells vehicles under a contractual right or obligation, in performance of an official duty, or in authority of any court of law, if the sale is for the purpose of saving the seller from loss or pursuant to the authority of a court.

(b) Persons who sell or distribute vehicles of a type subject to registration or trailers subject to identification pursuant to Section 5014.1 for a manufacturer to vehicle dealers licensed under this code, or who are employed by manufacturers or distributors to promote the sale of vehicles dealt in by those manufacturers or distributors. However, any of those persons who also sell vehicles at retail are vehicle dealers and are subject to this code.

(c) Persons regularly employed as salespersons by vehicle dealers licensed under this code while acting within the scope of that employment.

(d) Persons engaged exclusively in the bona fide business of exporting vehicles or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States, if no federal excise tax is legally payable or refundable on any of the transactions. Persons not engaged exclusively in the bona fide business of exporting vehicles, but who are engaged in the business of soliciting orders for the sale and delivery of vehicles, outside the territorial limits of the United States are exempt from licensure as dealers only if their sales of vehicles

produce less than 10 percent of their total gross revenue from all business transacted.

(e) Persons not engaged in the purchase or sale of vehicles as a business, who dispose of any vehicle acquired and used in good faith, for their own personal use, or for use in their business, and not for the purpose of avoiding the provisions of this code.

(f) Persons who are engaged in the purchase, sale, or exchange of vehicles, other than motorcycles subject to identification under this code, which are not intended for use on the highways.

(g) Persons temporarily retained as auctioneers solely for the purpose of disposing of vehicle stock inventories by means of public auction on behalf of the owners at the owners' place of business, or as otherwise approved by the department, if intermediate physical possession or control of, or an ownership interest in, the inventory is not conveyed to the persons so retained.

(h) Persons who are engaged exclusively in the business of purchasing, selling, servicing, or exchanging racing vehicles, parts for racing vehicles, and trailers designed and intended by the manufacturer to be used exclusively for carrying racing vehicles. For purposes of this subdivision, ''racing vehicle'' means a motor vehicle of a type used exclusively in a contest of speed or in a competitive trial of speed which is not intended for use on the highways.

(i) Any person who is a lessor.

(j) Any person who is a renter.

(k) Any salvage pool.

(*l*) Any yacht broker who is subject to the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code) and who sells used boat trailers in conjunction with the sale of a vessel.

(m) Any licensed automobile dismantler who sells vehicles that have been reported for dismantling as provided in Section 11520.

(n) The Director of Corrections when selling vehicles pursuant to Section 2813.5 of the Penal Code.

(o) (1) Any public or private nonprofit charitable, religious, or educational institution or organization that sells vehicles if all of the following conditions are met:

(A) The institution or organization qualifies for state tax-exempt status under Section 23701d of the Revenue and Taxation Code, and tax-exempt status under Section 501(c)(3) of the federal Internal Revenue Code.

(B) The vehicles sold were donated to the nonprofit charitable, religious, or educational institution or organization.

(C) The vehicles subject to retail sale meet all of the applicable equipment requirements of Division 12 (commencing with Section

24000) and are in compliance with emission control requirements as evidenced by the issuance of a certificate pursuant to subdivision (b) of Section 44015 of the Health and Safety Code. Under no circumstances may any institution or organization transfer the responsibility of obtaining a smog inspection certificate to the buyer of the vehicle.

(D) The proceeds of the sale of the vehicles are retained by that institution or organization for its charitable, religious, or educational purposes.

(2) An institution or organization described in paragraph (1) may sell vehicles on behalf of another institution or organization under the following conditions:

(A) The nonselling institution or organization meets the requirements of paragraph (1).

(B) The selling and nonselling institutions or organizations enter into a signed, written agreement pursuant to subparagraph (A) of paragraph (3) of subdivision (a) of Section 1660.

(C) The selling institution or organization transfers the proceeds from the sale of each vehicle to the nonselling institution or organization within 45 days of the sale. All net proceeds transferred to the nonselling institution or organization shall clearly be identifiable to the sale of a specific vehicle. The selling institution or organization may retain a percentage of the proceeds from the sale of a particular vehicle. However, any retained proceeds shall be used by the selling institution or organization for its charitable, religious, or educational purposes.

(D) At the time of transferring the proceeds, the selling institution or organization shall provide to the nonselling institution or organization, an itemized listing of the vehicles sold and the amount for which each vehicle was sold.

(E) In the event the selling institution or organization cannot complete a retail sale of a particular vehicle, or if the vehicle cannot be transferred as a wholesale transaction to a dealer licensed under this code, the vehicle shall be returned to the nonselling institution or organization and the written agreement revised to reflect that return. Under no circumstances may a selling institution or organization transfer or donate the vehicle to a third party that is excluded from the definition of a dealer under this section.

(3) An institution or organization described in this subdivision shall retain all records required to be retained pursuant to Section 1660.

(p) Any motor club, as defined in Section 12142 of the Insurance Code, that does not arrange or negotiate individual motor vehicle purchase transactions on behalf of its members but refers members to a new motor vehicle dealer for the purchase of a new motor vehicle and does not receive a fee from the dealer contingent upon the sale of the vehicle.

SEC. 3. Section 296 of the Vehicle Code is amended to read:

296. A ''distributor'' is any person other than a manufacturer who sells or distributes new vehicles subject to registration under this code, new trailers subject to identification pursuant to Section 5014.1, or new off-highway motorcycles subject to identification under this code, to dealers in this state and maintains representatives for the purpose of contacting dealers or prospective dealers in this state.

SEC. 4. Section 297 of the Vehicle Code is amended to read:

297. A ''distributor branch'' is an office maintained by a distributor for the sale of new vehicles or new trailers subject to identification pursuant to Section 5014.1 to dealers or for directing or supervising, in whole or in part, the distributor's representatives.

SEC. 5. Section 331 of the Vehicle Code is amended to read:

331. (a) A ''franchise'' is a written agreement between two or more persons having all of the following conditions:

(1) A commercial relationship of definite duration or continuing indefinite duration.

(2) The franchisee is granted the right to offer for sale or lease, or to sell or lease at retail new motor vehicles or new trailers subject to identification pursuant to Section 5014.1 manufactured or distributed by the franchisor or the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities.

(3) The franchisee constitutes a component of the franchisor's distribution system.

(4) The operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor.

(5) The operation of a portion of the franchisee's business is substantially reliant on the franchisor for a continued supply of new vehicles, parts, or accessories.

(b) The term ''franchise'' does not include an agreement entered into by a manufacturer or distributor and a person where all the following apply:

(1) The person is authorized to perform warranty repairs and service on vehicles manufactured or distributed by the manufacturer or distributor.

(2) The person is not a new motor vehicle dealer franchisee of the manufacturer or distributor.

(3) The person's repair and service facility is not located within the relevant market area of a new motor vehicle dealer franchisee of the manufacturer or distributor.

SEC. 6. Section 331.1 of the Vehicle Code is amended to read:

331.1. A ''franchisee'' is any person who, pursuant to a franchise, receives new motor vehicles subject to registration under this code, new

off-highway motorcycles, as defined in Section 436, or new trailers subject to identification pursuant to Section 5014.1 from the franchisor and who offers for sale or lease, or sells or leases the vehicles at retail or is granted the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities.

SEC. 7. Section 331.2 of the Vehicle Code is amended to read:

331.2. A ''franchisor'' is any person who manufactures, assembles, or distributes new motor vehicles subject to registration under this code, new off-highway motorcycles, as defined in Section 436, or new trailers subject to identification pursuant to Section 5014.1 and who grants a franchise.

SEC. 8. Section 672 of the Vehicle Code is amended to read:

672. (a) ''Vehicle manufacturer'' is any person who produces from raw materials or new basic components a vehicle of a type subject to registration under this code, off-highway motorcycles subject to identification under this code, or trailers subject to identification pursuant to Section 5014.1, or who permanently alters, for purposes of retail sales, new commercial vehicles by converting the vehicles into housecars that display the insignia of approval required by Section 18056 of the Health and Safety Code and any regulations issued pursuant thereto by the Department of Housing and Community Development. As used in this section, ''permanently alters'' does not include the permanent attachment of a camper to a vehicle.

(b) A vehicle manufacturer who produces a vehicle of a type subject to registration that consists of used or reconditioned parts, for the purposes of the code, is a remanufacturer, as defined in Section 507.8.

(c) Unless a vehicle manufacturer either grants franchises to franchisees in this state, or issues vehicle warranties directly to franchisees in this state or consumers in this state, the manufacturer shall have an established place of business or a representative in this state.

(d) The scope and application of this section are limited to Division 2 (commencing with Section 1500) and Division 5 (commencing with Section 11100).

SEC. 9. Section 4004.7 is added to the Vehicle Code, to read:

4004.7. (a) If the apportioned registration issued under Article 4 (commencing with Section 8050) of Chapter 4 for a commercial vehicle or vehicle combination that was last registered by a California resident has expired or has been terminated, the department, upon receipt of a completed application, a fee of thirty dollars ($30), and proof of financial responsibility for the vehicle, may issue an unladen operation permit to authorize the unladen operation of that vehicle or vehicle combination for a period of not more than 15 continuous days.

(b) This section does not apply to any vehicle or vehicle combination for which any vehicle registration fees, other than those for the current

year, vehicle license fees, or penalties, or any combination of those are due.

(c) Operation of a laden vehicle or vehicle combination under an unladen operation permit issued pursuant to this section is an infraction.

SEC. 10. Section 8058 is added to the Vehicle Code, to read:

8058. (a) The department shall charge interest on any underpaid fees due under this article, at the rate of 1 percent per month of the underpaid portion of the fees, commencing on the date the underpaid portion of the fees were originally due and accruing monthly until paid.

(b) Interest charged under subdivision (a) shall continue to accumulate during any disputation of the underpaid fees or any hearing regarding the underpaid fees. During any disputation or hearing, the registrant may pay the underpaid fees and other charges to avoid additional interest charges and may request a refund of any overpaid fees after final review.

(c) For any underpaid fees, the department shall impose a penalty of fifty dollars ($50) or 10 percent of the underpaid fees, whichever is greater, commencing on the date the underpaid fees were determined to be due.

(d) For the purposes of this section, ''underpaid fees'' include additional vehicle registration, weight, and license fees found to be due to this state and any other member of the International Registration Plan as the result of an audit or finding of an International Registration Plan carrier.

SEC. 11. Section 9250.15 of the Vehicle Code is amended to read:

9250.15. (a) In addition to any other fees specified in this code, the department shall collect an administrative service fee in the amount authorized under subdivision (b) for each application for registration, renewal of registration, or supplement apportioned registration pursuant to Article 4 (commencing with Section 8050) of Chapter 4.

(b) The administrative service fee required to be collected under subdivision (a) shall be at least the amount determined by the department to be sufficient to pay membership dues to the association acting as the repository for the International Registration Plan under Article 3 (commencing with Section 8000) of Chapter 4, but may not be more than two dollars ($2) for each application.

(c) The money collected by the department under this section, less the department's administrative costs in collecting and transmitting the money, shall be available, upon appropriation, to the department for payment to the association described in subdivision (b).

(d) Funds provided to the association under this section shall be used exclusively for the administration and support of reciprocity activities under the International Registration Plan.

SEC. 12. Section 9259.3 is added to the Vehicle Code, to read:

9259.3. For each application to include an additional operating area or a registration issued under Article 4 (commencing with Section 8050) of Chapter 4 of Division 3, the department shall require a deposit in an amount determined by the department to be sufficient to ensure compliance with that article.

SEC. 13. Section 9259.5 is added to the Vehicle Code, to read:

9259.5. For each application for immediate telephone service for a registration issued under Article 4 (commencing with Section 8050) of Chapter 4 of Division 3, the department shall impose a fee in an amount determined by the department to be sufficient to cover its administrative costs under this section.

SEC. 14. Section 2.5 of this bill incorporates amendments to Section 286 of the Vehicle Code proposed by both this bill and AB 871. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 286 of the Vehicle Code, and (3) this bill is enacted after AB 871, in which case Section 2 of this bill shall not become operative.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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.

CHAPTER 540

An act to add Section 14669.17 to the Government Code, relating to state real property.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. It is the intent of the Legislature that the downtown area of the City of Fresno be used to explore the possibility of multigovernmental cooperation through a joint powers authority for the siting and possible shared use of government buildings that conform with the Fresno Mayor's Downtown Implementation Team Plan. This method of cooperation may be known and cited as "The Fresno Plan."

SEC. 2. Section 14669.17 is added to the Government Code, to read:

14669.17. Notwithstanding any other provision of law, the Director of General Services may enter into a joint powers agreement with the City of Fresno, the Fresno Redevelopment Agency, the County of Fresno, the school district boards within the County of Fresno, or any other state, federal, or local governmental entity that wishes to participate, to study the infrastructure needs of downtown Fresno and the planning goals of the City of Fresno, to explore financing methods, and to make strategic recommendations.

CHAPTER 541

An act to add and repeal Chapter 6.7 (commencing with Section 8920) of Part 6 of the Education Code, relating to teenage pregnancy prevention.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Chapter 6.7 (commencing with Section 8920) is added to Part 6 of the Education Code, to read:

CHAPTER 6.7. TEENAGE PREGNANCY PREVENTION GRANT PROGRAM

Article 1. General Provisions and Definitions

8920. It is the intent of the Legislature in implementing the Teenage Pregnancy Prevention Grant Program to reduce the incidence of pregnancy for children and youth at high risk of pregnancy and childbearing during the teenage years by instituting a competitive grant program targeted at pupils in elementary and secondary schools.

8921. For purposes of this chapter, the following definitions apply:

(a) ''Council'' means the Healthy Start Support Services for Children Program Council established under Section 8803. This state interagency council is responsible for reviewing the Teenage Pregnancy Prevention Grant Program applications and any other duties imposed on the interagency council pursuant to this chapter.

(b) ''Lead agency'' means the State Department of Education.

(c) ''Local educational agency'' means a school district or county office of education.

(d) ''Local collaborative partner'' means an agency or organization in the community that agrees to actively participate in implementing the grant and in helping to achieve the proposed pupil results.

(e) ''Superintendent'' means the Superintendent of Public Instruction.

8922. This chapter 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.

Article 2. Superintendent's and Council's Duties

8923. (a) In order to encourage the integration of teenage pregnancy prevention and intervention services, the superintendent shall collaborate with the council to coordinate services under this chapter with other pregnancy prevention programs.

(b) The duties of the council shall include the following:

(1) Developing, promoting, and implementing policy affecting the Teenage Pregnancy Prevention Grant Program.

(2) Reviewing grant applications submitted to the lead agency and providing the lead agency with recommendations for awarding grants as specified in Section 8925.

(3) Soliciting input regarding program policy and direction from individuals and entities with experience in teenage pregnancy prevention and the integration of children's services.

(4) Assisting the lead agency in fulfilling its responsibilities under this chapter.

(5) Providing recommendations to the Governor, the Legislature, and the lead agency regarding the Teenage Pregnancy Prevention Grant Program.

(6) At the request of the superintendent, assisting the local educational agency in planning and implementing this grant program, including assisting with local advocacy and problem solving, and developing agency collaboration.

(7) Providing staff for technical assistance to local education agencies. Technical assistance may include providing information dissemination and referrals, including information about effective pregnancy prevention and intervention services strategies, conducting site visits, and convening workshops to assist in the implementation of a program developed pursuant to this chapter.

Article 3. Teenage Pregnancy Prevention Grant Program

8924. (a) The Legislature hereby establishes the Teenage Pregnancy Prevention Grant Program designed for pupils in elementary and secondary schools.

(b) The superintendent shall award grants based upon the recommendations of the council.

(c) Grants shall be awarded for a period not to exceed five years of program operation.

(d) Grant amounts awarded by the superintendent, in consultation with the council, shall be based on the benchmark of two hundred dollars ($200) per youth, per year. However, each grant amount shall be determined based on the individual program, taking into account the following factors:

(1) The number of youths served.

(2) The kinds of support and educational services provided to the youths.

(3) The number of paid personnel and consultants necessary for the program.

(4) The training costs for the providers.

(5) Printing and promotion costs.

(6) Evaluation costs.

(7) Other direct costs, such as insurance, telephone, space, and photocopying.

(8) Whether parents or guardians are included in the grant.

(e) Grants may include one-time startup costs.

(f) Startup and ongoing grant awards may be used for, among other things, purchasing equipment and supplies, hiring staff, designing a program evaluation, or hiring a consultant.

(g) All local programs funded through the Teenage Pregnancy Prevention Grant Program shall meet the following criteria:

(1) Be modeled after existing strategies designed for pupils in elementary and secondary schools that have been proven effective in delaying the onset of sexual activity and reducing the incidence of pregnancy among schoolage youth. The best method for an applicant for an initial or subsequent grant to show effectiveness is through presentation of persuasive evaluation data for the model or existing program. Examples of strategies found to be effective in delaying the onset of sexual activity and reducing pregnancy among schoolage youth include utilizing case management, providing age-appropriate health education including abstinence education, increasing the sense of a positive future, raising self-esteem, and providing opportunity for improving decisionmaking and goal setting skills.

(2) Have demonstrated readiness to begin operation of a program or expand an existing teen pregnancy prevention program.

(h) To the extent possible, in awarding grants the superintendent shall give consideration to program applicants that meet one or more of the following criteria:

(1) Are located in counties with the highest teenage birthrates, or are located in geographical areas defined by ZIP Codes in which there are high teenage birthrates.

(2) Will target youth before they become sexually active.

(3) Will target youth with demonstrated risk factors, including youth living in poverty, youth that have low basic skills and academic achievement, youth that have siblings or a parent who was a teenage parent, youth that engage in multiple high-risk behaviors such as alcohol use, drug use, and sexual activity, youth having low self-esteem, youth participating in sexual activity with adult men, and youth that have been sexually victimized.

(4) Are programs that are age-appropriate, and culturally and community sensitive for the target population.

8925. (a) Each local educational agency interested in being awarded a grant under this article shall submit an application to the superintendent at a time and manner, and with any appropriate information, as the superintendent may reasonably require.

(b) Each grant application submitted shall include all of the following:

(1) A description of the proposed program plan.

(2) Documentation of the need for program operation support.

(3) A description of the program goals and objectives.

(4) A description of the proposed program, including the target population.

(5) Documentation of the effectiveness of the strategies upon which the proposed or ongoing program is based.

(6) A budget, including the amount of the requested funding and existing resources to be used or redirected.

(7) Agencies responsible for the implementation of the program.

(8) A procedure for the evaluation of the program.

(9) A description of the governing mechanism by which the program will be implemented, including local decisionmaking responsibilities and parental involvement, organizational needs, anticipated problems and procedures to solve them, and incentives for collaboration and participation incentives to personnel.

(c) The program plan shall include all of the following:

(1) Provisions for data collection and recordkeeping, including records of the population served, the components of the service, the

results of the service, and costs, including startup, direct and indirect costs, such as costs incurred by other agencies, and cost savings, if any.

(2) A service evaluation component, including input, process, and outcome indicators, quality assessment, and the process by which these measures will be taken. The program plan shall target youth at high risk of teenage childbearing or parenting, and shall keep track of all the following long-term outcome measures for the youth participating in the program, to the extent possible:

(A) Any reduction in teenage birthrates.

(B) Any increase in high school completion rates.

Article 4. Fiscal Provisions

8926. (a) It is the intent of the Legislature that the superintendent, in consultation with the council, seek and utilize any federal funds that may be made available for the purposes of this chapter.

(b) Other funds appropriated by the Legislature to the superintendent for purposes of the Teenage Pregnancy Prevention Grant Program shall be allocated by the superintendent to local educational agencies that have been selected to participate in the grant program pursuant to subdivision (d) of Section 8924. Notwithstanding any other provision of law, any amount not allocated during a fiscal year may be carried over to the subsequent fiscal year.

(c) To the extent permitted by federal law, any funding made available to a local educational agency shall be subject to all of the following conditions:

(1) The program is open to youth 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.

(4) The funds are not used for condom distribution.

CHAPTER 542

An act to amend Sections 10, 12a, and 135 of the Code of Civil Procedure, relating to courts.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 10 of the Code of Civil Procedure is amended to read:

10. Holidays within the meaning of this code are every Sunday and any other days that are specified or provided for as judicial holidays in Section 135.

SEC. 2. Section 12a of the Code of Civil Procedure is amended to read:

12a. (a) If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day which is not a holiday. For purposes of this section, ''holiday'' means all day on Saturdays, all holidays specified in Section 135 and, to the extent provided in Section 12b, all days which by terms of Section 12b are required to be considered as holidays.

(b) This section applies also to Sections 659, 659a, 946, and 974 to 982, inclusive, and the periods of time severally therein prescribed or provided for, and to all other provisions of law, however stated or wherever expressed, providing or requiring an act to be performed on a particular day or within a specified period of time. The mention of these sections is not intended and shall not be construed to exclude the application of this section to any other provisions of law, whether the latter are expressed in this or any other code or statute, ordinance, rule, or regulation.

SEC. 3. Section 135 of the Code of Civil Procedure is amended to read:

135. Every full day designated as a holiday by Section 6700 of the Government Code, including that Thursday of November declared by the President to be Thanksgiving Day, is a judicial holiday, except September 9, known as ''Admission Day,'' and any other day appointed by the President, but not by the Governor, for a public fast, thanksgiving, or holiday. If a judicial holiday falls on a Saturday or a Sunday, the Judicial Council may designate an alternative day for observance of the holiday. Every Saturday and the day after Thanksgiving Day is a judicial holiday. Officers and employees of the courts shall observe only the judicial holidays established pursuant to this section.

CHAPTER 543

An act to amend Section 25205.5 of the Health and Safety Code, to amend Sections 7096, 9274, 17037, 17062, 17276, 18417, 18633.5,

19104, 19191, 19192, 19306, 19311, 19378, 19443, 19604, 19607, 19705, 21006, 21027, 23001, 23040.1, 23051.7, 23055, 23182, 23608.2, 23609, 23610.5, 23622.8, 23630, 23645, 23646, 23649, 23772, 24416, 24453, 24472, 30459.4, 32402, 32474, 40214, 41174, 43525, 45652, 45870, 46502, 46625, 50140, 50156.14, 55222, 55335, and 60633.1 of, to amend the heading of Part 11 (commencing with Section 23001) of Division 2 of, and to amend the heading of Chapter 2 (commencing with Section 23101) of Part 11 of Division 2 of, and to add Section 55053 to, the Revenue and Taxation Code, relating to state levies.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

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

SECTION 1. Section 25205.5 of the Health and Safety Code is amended to read:

25205.5. (a) In addition to the fee imposed pursuant to Section 25174.1, every generator of hazardous waste, in the amounts specified in subdivision (c), shall pay the board a generator fee for each generator site for each calendar year, or portion thereof, unless the generator has paid a facility fee or received a credit, as specified in Section 25205.2, for each specific site, for the calendar year for which the generator fee is due.

(b) The base fee rate for the fee imposed pursuant to subdivision (a) is two thousand seven hundred forty-eight dollars ($2,748).

(c) (1) Each generator who generates an amount equal to, or more than, five tons, but less than 25 tons, of hazardous waste during the prior calendar year shall pay 5 percent of the base rate.

(2) Each generator who generates an amount equal to, or more than, 25 tons, but less than 50 tons, of hazardous waste during the prior calendar year shall pay 40 percent of the base rate.

(3) Each generator who generates an amount equal to, or more than, 50 tons, but less than 250 tons, of hazardous waste during the prior calendar year shall pay the base rate.

(4) Each generator who generates an amount equal to, or more than, 250 tons, but less than 500 tons, of hazardous waste during the prior calendar year shall pay five times the base rate.

(5) Each generator who generates an amount equal to, or more than, 500 tons, but less than 1,000 tons, of hazardous waste during the prior calendar year shall pay 10 times the base rate.

(6) Each generator who generates an amount equal to, or more than, 1,000 tons, but less than 2,000 tons, of hazardous waste during the prior calendar year shall pay 15 times the base rate.

(7) Each generator who generates an amount equal to, or more than, 2,000 tons of hazardous waste during the prior calendar year shall pay 20 times the base rate.

(d) The base rate established pursuant to subdivision (b) was the base rate for the 1997 calendar year and the board shall adjust the base rate annually to reflect increases or decreases in the cost of living, during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.

(e) The establishment of the annual operating fee pursuant to this section is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The following materials are not hazardous wastes for purposes of this section:

(1) Hazardous materials which are recycled, and used onsite, and are not transferred offsite.

(2) Aqueous waste treated in a treatment unit operating, or which subsequently operates, pursuant to a permit-by-rule, or pursuant to Section 25200.3 or 25201.5. However, hazardous waste generated by a treatment unit treating waste pursuant to a permit-by-rule, by a unit which subsequently obtains a permit-by-rule, or other authorization pursuant to Section 25200.3 or 25201.5 is hazardous waste for purposes of this section.

(g) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(h) (1) A generator who pays a hazardous waste generator inspection fee to a certified unified program agency, which is imposed as part of a single fee system and fee accountability program that are both in compliance with the requirements of Section 25404.5, shall be eligible for a refund of all, or part of, the generator fee paid pursuant to subdivision (a) if both of the following conditions apply:

(A) The generator received a credit pursuant to Section 43152.7 or 43152.11 of the Revenue and Taxation Code for fees paid for hazardous waste generated in 1996.

(B) The department certifies, pursuant to subdivision (b) of Section 25205.9, that funds are available to pay all or part of the refund.

(2) A generator who is eligible for a refund pursuant to paragraph (1) shall submit an application for that refund to the board by September 30 following the fiscal year during which the generator paid the generator fee pursuant to subdivision (a). An application for a refund postmarked after September 30 is void, shall not be processed by the board, and shall be returned to the applicant.

(i) (1) A generator who transfers hazardous materials to an offsite facility for recycling at that offsite facility or another offsite facility shall

be eligible for a refund of all, or part of, the generator fee paid pursuant to subdivision (a) if all of the following conditions apply:

(A) The offsite facility to which the hazardous materials are manifested pays a facility fee pursuant to Section 25205.2.

(B) The amount of hazardous materials transferred to the offsite facility and recycled there, when deducted from the total tonnage of hazardous waste generated at the generator's site, results in the generator becoming eligible for a generator fee that is lower than the fee paid pursuant to subdivision (a).

(C) The hazardous materials transferred to the offsite facility are not burned in a boiler, industrial furnace, or an incinerator, as those terms are defined in Section 260.10 of Title 40 of the Code of Federal Regulations, used in a manner constituting disposal, or used to produce products that are applied to land.

(D) The department certifies, pursuant to subdivision (b) of Section 25205.9, that funds are available to pay all or part of the refund.

(2) A generator who is eligible for a refund pursuant to paragraph (1) shall submit an application for that refund to the board by September 30 following the fiscal year during which the generator paid the generator fee pursuant to subdivision (a). An application for a refund postmarked after September 30 is void, shall not be processed by the board, and shall be returned to the applicant.

(j) (1) The amendment of this section made by Chapter 1125 of the Statutes of 1991 does not constitute a change in, but is declaratory of, existing law.

(2) The amendment of subdivision (a) of this section made by Chapter 259 of the Statutes of 1996 does not constitute a change in, but is declaratory of, existing law.

SEC. 2. Section 7096 of the Revenue and Taxation Code is amended to read:

7096. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in the form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 3. Section 9274 of the Revenue and Taxation Code is amended to read:

9274. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 4. Section 17037 of the Revenue and Taxation Code is amended to read:

17037. Provisions in other codes or general law statutes which are related to this part include all of the following:

(a) Chapter 20.6 (commencing with Section 9891) of Division 3 of the Business and Professions Code, relating to tax preparers.

(b) Part 10.2 (commencing with Section 18401), relating to the administration of franchise and income tax laws.

(c) Part 10.5 (commencing with Section 20501), relating to the Property Tax Assistance and Postponement Law.

(d) Part 10.7 (commencing with Section 21001), relating to the Taxpayers' Bill of Rights.

(e) Part 11 (commencing with Section 23001), relating to the Corporation Tax Law.

(f) Sections 15700 to 15702.1, inclusive, of the Government Code, relating to the Franchise Tax Board.

SEC. 5. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of—

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or 17048, before reduction for any credits against the tax, less any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560.

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative minimum tax for the taxable year shall be equal to the following percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, before reduction for any credits against the tax:

(i) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, 8.5 percent.

(ii) For any taxable year beginning on or after January 1, 1996, 7 percent.

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed as if the nonresident or part-year resident were a resident for the entire year multiplied by the ratio of California adjusted gross income (as modified for purposes of this chapter) to total adjusted gross income from all sources (as modified for purposes of this chapter). For purposes of computing the tax under subparagraph (A) and gross income from all sources, the net operating

loss deduction provided in Section 56(d) of the Internal Revenue Code shall be computed as if the taxpayer were a resident for all prior years.

(C) For purposes of this section, the term ''California adjusted gross income'' includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, only those items of adjusted gross income (as modified for purposes of this chapter) which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(4) The provisions of Section 55(b)(2) of the Internal Revenue Code, relating to alternative minimum taxable income, shall be modified to provide that alternative minimum taxable income shall not include the income, adjustments, and items of tax preference attributable to any trade or business of a qualified taxpayer.

(A) For purposes of this paragraph, ''qualified taxpayer'' means a taxpayer who meets both of the following:

(i) Is the owner of, or has an ownership interest in, a trade or business.

(ii) Has aggregate gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year from all trades or businesses of which the taxpayer is the owner or has an ownership interest, in the amount of that taxpayer's proportionate interest in each trade or business.

(B) For purposes of this paragraph, ''aggregate gross receipts, less returns and allowances'' means the sum of the gross receipts of the trades or businesses which the taxpayer owns and the proportionate interest of the gross receipts of the trades or businesses which the taxpayer owns and of passthrough entities in which the taxpayer holds an interest.

(C) For purposes of this paragraph, ''gross receipts, less returns and allowances'' means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(D) For purposes of this paragraph, ''proportionate interest'' means:

(i) In the case of a passthrough entity which reports a profit for the taxable year, the taxpayer's profit interest in the entity at the end of the taxpayer's taxable year.

(ii) In the case of a passthrough entity which reports a loss for the taxable year, the taxpayer's loss interest in the entity at the end of the taxpayer's taxable year.

(iii) In the case of a passthrough entity which is sold or liquidates during the taxable year, the taxpayer's capital account interest in the entity at the time of the sale or liquidation.

(E) (i) For purposes of this paragraph, ''proportionate interest'' includes an interest in a passthrough entity.

(ii) For purposes of this paragraph, ''passthrough entity'' means any of the following:

(I) A partnership, as defined by Section 17008.

(II) An S corporation, as provided in Chapter 4.5 (commencing with Section 23800) of Part 11.

(III) A regulated investment company, as provided in Section 24871.

(IV) A real estate investment trust, as provided in Section 24872.

(V) A real estate mortgage investment conduit, as provided in Section 24874.

(5) For taxable years beginning on or after January 1, 1998, Section 55(d)(1) of the Internal Revenue Code, relating to exemption amount for taxpayers other than corporations is modified, for purposes of this part, to provide the following exemption amounts in lieu of those contained therein:

(A) Fifty-seven thousand two hundred sixty dollars ($57,260) in the case of either of the following:

(i) A joint return.

(ii) A surviving spouse.

(B) Forty-two thousand nine hundred forty-five dollars ($42,945) in the case of an individual who is both of the following:

(i) Not a married individual.

(ii) Not a surviving spouse.

(C) Twenty-eight thousand six hundred thirty dollars ($28,630) in the case of either of the following:

(i) A married individual who files a separate return.

(ii) An estate or trust.

(6) For taxable years beginning on or after January 1, 1998, Section 55(d)(3) of the Internal Revenue Code, relating to the phaseout of exemption amount for taxpayers other than corporations is modified, for purposes of this part, to provide the following phaseout of exemption amounts in lieu of those contained therein:

(A) Two hundred fourteen thousand seven hundred twenty-five dollars ($214,725) in the case of a taxpayer described in subparagraph (A) of paragraph (5).

(B) One hundred sixty-one thousand forty-four dollars ($161,044) in the case of a taxpayer described in subparagraph (B) of paragraph (5).

(C) One hundred seven thousand three hundred sixty-two dollars ($107,362) in the case of a taxpayer described in subparagraph (C) of paragraph (5).

(7) For each taxable year beginning on or after January 1, 1999, the Franchise Tax Board shall recompute the exemption amounts prescribed in paragraph (5) and the phaseout of exemption amounts prescribed in paragraph (6). Those computations shall be made as follows:

(A) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(B) The Franchise Tax Board shall do both of the following:

(i) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to subparagraph (A) and dividing the result by 100.

(ii) Multiply the preceding taxable year exemption amounts and the phaseout of exemption amounts by the inflation adjustment factor determined in clause (i) and round off the resulting products to the nearest one dollar ($1).

(c) (1) (A) Section 56(a)(6) of the Internal Revenue Code as in effect on January 1, 1997, relating to installment sales of certain property, shall not apply to payments received in taxable years beginning on or after January 1, 1997, with respect to dispositions occurring in taxable years beginning after December 31, 1987.

(B) This paragraph shall not apply to taxable years beginning on or after January 1, 1998.

(2) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

(3) Section 56(b)(3) of the Internal Revenue Code, relating to treatment of incentive stock options, shall be modified to additionally provide the following:

(A) Section 421 of the Internal Revenue Code shall not apply to the transfer of stock acquired pursuant to the exercise of a California qualified stock option under Section 17502.

(B) Section 422(c)(2) of the Internal Revenue Code shall apply in any case where the disposition and inclusion of a California qualified stock option for purposes of this chapter are within the same taxable year and that section shall not apply in any other case.

(C) The adjusted basis of any stock acquired by the exercise of a California qualified stock option shall be determined on the basis of the treatment prescribed by this paragraph.

(d) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not apply.

(e) (1) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference the amount by which the deduction allowable under Section 170 of the Internal Revenue Code, relating to charitable contributions or gifts, or Section 642(c) of the Internal Revenue Code, relating to deduction for amounts paid or permanently set aside for a charitable purpose, would be reduced if all capital gain property were taken into account at its adjusted basis.

(2) For purposes of paragraph (1), the term ''capital gain property'' has the meaning given to that term by Section 170(b)(1)(C)(iv) of the Internal Revenue Code. That term shall not include any property to which an election under Section 170(b)(1)(C)(iii) of the Internal Revenue Code applies.

(f) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference an amount equal to one-half of the amount excluded from gross income for the taxable year under Section 18152.5.

(g) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not apply.

SEC. 6. 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 the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) Sixty-five percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any 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 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 subdivision (d).

(ii) With respect to the portion of the net operating loss which exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(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 any 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 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 as provided in subdivision (d).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(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) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, 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'' except as otherwise provided in paragraphs (2) and (3).

(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, 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 ''10 taxable years'' in lieu of ''20 taxable years.''

(2) For any taxable year beginning before January 1, 2000, 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 taxable

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) Except as otherwise provided, the amendments made by the act adding this subdivision shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 7. Section 18417 of the Revenue and Taxation Code is amended to read:

18417. Provisions in other codes or general law statutes that are related to this part include all of the following:

(a) Chapter 20.6 (commencing with Section 9891) of Division 3 of the Business and Professions Code, relating to tax preparers.

(b) Sections 1502, 2204 to 2206, inclusive, 6210, 6810, 8210, and 8810 of the Corporations Code, relating to the corporation officer statement penalty.

(c) Section 2104 of the Corporations Code, which prevents the application of any provision of this part against any foreign lending institution whose activities in this state are limited to those described in subdivision (d) of Section 191 of the Corporations Code.

(d) Sections 15700 to 15702.1, inclusive, of the Government Code, relating to the Franchise Tax Board.

(e) Part 10 (commencing with Section 17001) of this division, relating to the Personal Income Tax Law.

(f) Part 10.5 (commencing with Section 20501) of this division, relating to the Senior Citizens Property Tax Assistance and Postponement Law.

(g) Part 10.7 (commencing with Section 21001) of this division, relating to the Taxpayers' Bill of Rights.

(h) Part 11 (commencing with Section 23001) of this division, relating to the Corporation Tax Law.

SEC. 8. Section 18633.5 of the Revenue and Taxation Code is amended to read:

18633.5. (a) Every limited liability company which is classified as a partnership for California tax purposes that is doing business in this state, organized in this state, or registered with the Secretary of State shall file its return on or before the fifteenth day of the fourth month following the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). The return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under penalty of perjury, signed by one of the limited liability company members. In the case of a limited liability company not doing business in this state, and subject to the tax imposed by subdivision (b) of Section 17941, the Franchise Tax Board shall, for returns required to be filed on or after January 1, 1998, prescribe the manner and extent to which the information identified in this subdivision shall be included with the return required by this subdivision.

(b) Each limited liability company required to file a return under subdivision (a) for any limited liability company taxable year shall, on or before the day on which the return for that taxable year was required to be filed, furnish to each person who holds an interest in that limited liability company at any time during that taxable year a copy of that information required to be shown on that return as may be required by forms and instructions prescribed by the Franchise Tax Board.

(c) Any person who holds an interest in a limited liability company as a nominee for another person shall do both of the following:

(1) Furnish to the limited liability company, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that person, and any other information for that taxable year as the Franchise Tax Board may prescribe by forms and instructions.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that limited liability company under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) (1) A limited liability company shall file with its return required under subdivision (a), in the form required by the Franchise Tax Board, the agreement of each nonresident member to file a return pursuant to Section 18501, to make timely payment of all taxes imposed on the member by this state with respect to the income of the limited liability company, and to be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the member by this state with respect to the income of the limited liability company. If the limited liability company fails to timely file the agreements on behalf of each of its nonresident members, then the limited liability company shall, at the time set forth in subdivision (f), pay to this state on behalf of each nonresident member of whom an agreement has not been timely filed an amount equal to the highest marginal tax rate in effect under Section 17041, in the case of members which are individuals, estates, or trusts, and Section 23151, in the case of members which are corporations, multiplied by the amount of the member's distributive share of the income source to the state reflected on the limited liability company's return for the taxable period. A limited liability company shall be entitled to recover the payment made from the member on whose behalf the payment was made.

(2) If a limited liability company fails to attach the agreement or to timely pay the payment required by paragraph (1), the payment shall be considered the tax of the limited liability company for purposes of the penalty prescribed by Section 19132 and interest prescribed by Section 19101 for failure to timely pay the tax. Payment of the penalty and interest imposed on the limited liability company for failure to timely pay the amount required by this subdivision shall extinguish the liability of a nonresident member for the penalty and interest for failure to make timely payment of all taxes imposed on that member by this state with respect to the income of the limited liability company.

(3) No penalty or interest shall be imposed on the limited liability company under paragraph (2) if the nonresident member timely files and pays all taxes imposed on the member by this state with respect to the income of the limited liability company.

(f) Any agreement of a nonresident member required to be filed pursuant to subdivision (e) shall be filed at either of the following times:

(1) The time the annual return is required to be filed pursuant to this section for the first taxable period for which the limited liability company became subject to tax pursuant to Chapter 10.6 (commencing with Section 17941).

(2) The time the annual return is required to be filed pursuant to this section for any taxable period in which the limited liability company had a nonresident member on whose behalf an agreement described in subdivision (e) has not been previously filed.

(g) Any amount paid by the limited liability company to this state pursuant to paragraph (1) of subdivision (e) shall be considered to be a payment by the member on account of the income tax imposed by this state on the member for the taxable period.

(h) Every limited liability company that is classified as a corporation for California tax purposes shall be subject to the requirement to file a tax return under the provisions of Part 10.2 (commencing with Section 18401) and the applicable taxes imposed by Part 11 (commencing with Section 23001) including Section 23221 relating to the prepayment of the minimum tax to the Secretary of State.

(i) (1) Every limited liability company doing business in this state, organized in this state, or registered with the Secretary of State, that is disregarded pursuant to Section 23038 shall file a return that includes information necessary to verify its liability under Sections 17941 and 17942, provides its sole owner's name and taxpayer identification number, includes the consent of the owner to California tax jurisdiction, and includes other information necessary for the administration of this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(2) If the owner's consent required under paragraph (1) is not included, the limited liability company shall pay on behalf of its owner an amount consistent with, and treated the same as, the amount to be paid under subdivision (e) by a limited liability company on behalf of a nonresident member for whom an agreement required by subdivision (e) is not attached to the return of the limited liability company.

(3) The return required under paragraph (1) shall be filed on or before the fifteenth day of the fourth month after the close of the taxable year of the owner subject to tax under Part 10 (commencing with Section 17001) of Division 2 or on or before the fifteenth day of the third month after the close of the taxable year of the owner subject to tax under Chapter 2 (commencing with Section 23101) of Part 11 of Division 2, whichever is applicable.

(4) For limited liability companies disregarded pursuant to Section 23038, ''taxable year of the owner'' shall be substituted for ''taxable year'' in Sections 17941 and 17942.

SEC. 9. Section 19104 of the Revenue and Taxation Code is amended to read:

19104. (a) The Franchise Tax Board may abate all or any part of any of the following:

(1) Any interest on a deficiency or related to a proposed deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Franchise Tax Board (acting in his or her official capacity) in performing a ministerial or managerial act.

(2) Any interest on a payment of any tax described in Section 19033 to the extent that any delay in that payment is attributable to an officer or employee of the Franchise Tax Board (acting in his or her official capacity) being dilatory in performing a ministerial or managerial act.

(3) Any interest accruing from a deficiency based on a final federal determination of tax, for the same period that interest was abated on the related federal deficiency amount under Section 6404(e) of the Internal Revenue Code, and the error or delay occurred on or before the issuance of the final federal determination. This subparagraph shall apply to any ministerial act for which the interest accrued after September 25, 1987, or for any managerial act applicable to a taxable year beginning on or after January 1, 1998, for which the Franchise Tax Board may propose an assessment or allow a claim for refund.

(b) For purposes of subdivision (a):

(1) Except as provided in paragraph (3), an error or delay shall be taken into account only if no significant aspect of that error or delay can be attributed to the taxpayer involved and after the Franchise Tax Board has contacted the taxpayer in writing with respect to that deficiency or payment.

(2) (A) Except as provided in paragraph (4), after the Franchise Tax Board mails its notice of determination not to abate interest, a taxpayer may appeal the Franchise Tax Board's determination to the State Board of Equalization within the following periods:

(i) Thirty days in the case of any unpaid interest described under subdivision (a).

(ii) Ninety days in the case of any paid interest described under subdivision (a).

(B) The State Board of Equalization shall have jurisdiction over the appeal to determine whether the Franchise Tax Board's failure to abate interest under this section was an abuse of discretion, and may order an abatement.

(C) Except for clauses (i) and (ii) of subparagraph (A), the provisions of this paragraph are operative for requests for abatement of interest made on or after January 1, 1998. The provisions of clauses (i) and (ii) of subparagraph (A) shall apply to requests for abatement of interest made on or after January 1, 2001, in accordance with subdivision (d).

(3) If the Franchise Tax Board fails to mail its notice of determination on a request to abate interest within six months after the request is filed, the taxpayer may consider that the Franchise Tax Board has determined

not to abate interest and appeal that determination to the board. This paragraph shall not apply to requests for abatement of interest made pursuant to paragraph (4).

(4) A request for abatement of interest related to a proposed deficiency may be made with the written protest of the underlying proposed deficiency filed pursuant to Section 19041 or with an appeal to the board under Section 19045 in the form and manner required by the Franchise Tax Board. The action of the Franchise Tax Board denying any portion of the request for abatement of interest relating to the proposed deficiency shall be considered as part of the appeal of the action of the Franchise Tax Board on the protest of the proposed deficiency. If the taxpayer filed an appeal from the Franchise Tax Board's action on the protest of a proposed deficiency and the deficiency is final pursuant to Section 19048, the taxpayer may not thereafter request an abatement of interest accruing prior to the time the deficiency is final. However, the taxpayer may thereafter request an abatement pursuant to this section limited to interest accruing after the deficiency is final.

(c) The Franchise Tax Board shall abate the assessment of all interest on any erroneous refund for which an action for recovery is provided under Section 19411 until 30 days after the date demand for repayment is made, unless either of the following has occurred:

(1) The taxpayer (or a related party) has in any way caused that erroneous refund.

(2) That erroneous refund exceeds fifty thousand dollars ($50,000).

(d) The amendments made to this section by the act adding this subdivision shall apply to requests for abatement of interest and appeals made on or after January 1, 2001.

(e) Except as provided in subparagraph (C) of paragraph (2) of subdivision (b), the amendments made by Chapter 600 of the Statutes of 1997 are operative with respect to taxable years beginning on or after January 1, 1998.

SEC. 10. Section 19191 of the Revenue and Taxation Code is amended to read:

19191. (a) The Franchise Tax Board may enter into a voluntary disclosure agreement with any qualified entity, qualified shareholder, or qualified beneficiary as defined in Section 19192, that is binding on both the Franchise Tax Board and the qualified entity, qualified shareholder, or qualified beneficiary.

(b) The Franchise Tax Board shall do all of the following:

(1) Provide guidelines and establish procedures for qualified entities to apply for voluntary disclosure agreements.

(2) Accept applications on an anonymous basis from qualified entities for voluntary disclosure agreements.

(3) Implement procedures for accepting applications for voluntary disclosure agreements through the National Nexus Program administered by the Multistate Tax Commission.

(4) For purposes of considering offers from qualified entities to enter into voluntary disclosure agreements, take into account the following criteria:

(A) The nature and magnitude of the qualified entity's previous presence and activity in this state and the facts and circumstances by which the nexus of the qualified entity was established.

(B) The extent to which the weight of the factual circumstances demonstrates that a prudent business person exercising reasonable care would conclude that the previous activities and presence in this state were or were not immune from taxation by this state by reason of Public Law 86-272 or otherwise.

(C) Reliance on the advice of a person in a fiduciary position or other competent advice that the qualified entity's activities were immune from taxation by this state.

(D) Lack of evidence of willful disregard or neglect of the tax laws of this state on the part of the qualified entity.

(E) Demonstrations of good faith on the part of the qualified entity.

(F) Benefits that will accrue to the state by entering into a voluntary disclosure agreement.

(5) Act on any application of a voluntary disclosure agreement within 120 days of receipt.

(6) Enter into voluntary disclosure agreements with qualified entities, qualified shareholders, or qualified beneficiaries, as authorized in subdivision (a) and based on the criteria set forth in paragraph (4).

(c) Before any voluntary disclosure agreement becomes binding, the Franchise Tax Board, itself, shall approve the agreement in the following manner:

(1) The Executive Officer and Chief Counsel of the Franchise Tax Board shall recommend and submit the voluntary disclosure agreement to the Franchise Tax Board for approval.

(2) Each voluntary disclosure agreement recommendation shall be submitted in a manner as to maintain the anonymity of the taxpayer applying for the voluntary disclosure agreement.

(3) Any recommendation for approval of a voluntary disclosure agreement shall be approved or disapproved by the Franchise Tax Board, itself, within 45 days of the submission of that recommendation to the board.

(4) Any recommendation of a voluntary disclosure agreement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved.

(5) Disapproval of a recommendation of a voluntary disclosure agreement shall be made only by a majority vote of the Franchise Tax Board.

(6) The members of the Franchise Tax Board shall not participate in any voluntary disclosure agreement except as provided in this subdivision.

(d) The voluntary disclosure agreement entered into by the Franchise Tax Board and the qualified entity, qualified shareholder, or qualified beneficiary as provided for in subdivision (a) shall to the extent applicable specify that:

(1) The Franchise Tax Board shall with respect to a qualified entity, qualified shareholder, or qualified beneficiary, except as provided in paragraph (4) or (7) of subdivision (a) of Section 19192:

(A) Waive its authority under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) to assess or propose to assess taxes, additions to tax, fees, or penalties with respect to each taxable year ending prior to six years from the signing date of the voluntary disclosure agreement.

(B) With respect to each of the six taxable years ending immediately preceding the signing date of the voluntary disclosure agreement, based on its discretion, agree to waive any or all of the following:

(i) Any penalty related to a failure to make and file a return, as provided in Section 19131.

(ii) Any penalty related to a failure to pay any amount due by the date prescribed for payment, as provided in Section 19132.

(iii) Any addition to tax related to an underpayment of estimated tax, as provided in Section 19136.

(iv) Any penalty related to Section 6810 or subdivision (a) of Section 8810 of the Corporations Code, as provided in Section 19141.

(v) Any penalty related to a failure to furnish information or maintain records, as provided in Section 19141.5.

(vi) Any addition to tax related to an underpayment of tax imposed under Part 11 (commencing with Section 23001), as provided in Section 19142.

(vii) Any penalty related to a partnership required to file a return under Section 18633, as provided in Section 19172.

(viii) Any penalty related to a failure to file information returns, as provided in Section 19183.

(ix) Any penalty related to relief from contract voidability, as provided in Section 23305.1.

(2) The qualified entity, qualified shareholder, or qualified beneficiary shall:

(A) With respect to each of the six taxable years ending immediately preceding the signing date of the written agreement:

(i) Voluntarily and fully disclose on the qualified entity's application all material facts pertinent to the qualified entity's, shareholder's, or beneficiary's liability for any taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(ii) Except as provided in paragraph (3), within 30 days from the signing date of the voluntary disclosure agreement:

(I) File all returns required under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(II) Pay in full any tax, interest, and penalties (other than those penalties specifically waived by the Franchise Tax Board under the terms of the voluntary disclosure agreement) imposed under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) in a manner as may be prescribed by the Franchise Tax Board.

(B) Agree to comply with all franchise and income tax laws of this state in subsequent taxable years by filing all returns required and paying all amounts due under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(3) The Franchise Tax Board may extend the time for filing returns and paying amounts due to 120 days from the signing date of the voluntary disclosure agreement.

(e) The amendments to this section made by Chapter 954 of the Statutes of 1996 shall apply to taxable years beginning on or after January 1, 1997.

(f) The amendments to this section made by the act adding this subdivision shall apply to voluntary disclosure agreements entered into on or after January 1, 2002.

SEC. 11. Section 19192 of the Revenue and Taxation Code is amended to read:

19192. For purposes of this article:

(a) (1) ''Qualified entity'' means an entity that is all of the following:

(A) A corporation, as defined in Section 23038, or a qualified trust, as defined in paragraph (5).

(B) An entity, including any predecessors to the entity, that previously has never filed a return with the Franchise Tax Board pursuant to this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23011).

(C) An entity, including any predecessors to the entity, that previously has not been the subject of an inquiry by the Franchise Tax Board with respect to liability for any of the taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(D) An entity that voluntarily comes forward prior to any unilateral contact from the Franchise Tax Board, makes application for a voluntary

disclosure agreement in a form and manner prescribed by the Franchise Tax Board, and makes a full and accurate statement of its activities in this state for the six immediately preceding taxable years.

(2) (A) Notwithstanding paragraph (1), a qualified entity does not include any of the following:

(i) A corporation that is organized and existing under the laws of this state.

(ii) A corporation that is qualified or registered with the office of the Secretary of State.

(iii) An entity that maintains and staffs a permanent facility in this state.

(B) For purposes of this paragraph, the storing of materials, goods, or products in a public warehouse pursuant to a public warehouse contract does not constitute maintaining a permanent facility in this state.

(3) ''Qualified shareholder'' means an individual that is all of the following:

(A) A nonresident on the signing date of the voluntary disclosure agreement.

(B) A shareholder of an S corporation (defined in Section 23800) that has applied for a voluntary disclosure agreement under this article under which all material facts pertinent to the shareholder's liability would be disclosed on that S corporation's voluntary disclosure agreement as required under clause (i) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 19191.

(4) Notwithstanding paragraph (3), subparagraph (B) of paragraph (1) of subdivision (d) of Section 19191 shall not apply to any of the six taxable years immediately preceding the signing date that the qualified shareholder was a California resident required to file a California tax return, nor to any penalties or additions to tax attributable to income other than the California source income from the S corporation that filed an application under this article.

(5) ''Qualified trust'' means a trust that meets both of the following:

(A) (i) The administration of the trust has never been performed in California.

(ii) For purposes of this subparagraph, administrative activities performed in California would be deemed to be performed outside of California if those activities were inconsequential to the overall administration of the trust.

(B) For six taxable years ending immediately preceding the signing date of the voluntary disclosure agreement, the trust has had no resident beneficiaries (other than a beneficiary whose interest in that trust is contingent).

(6) ''Qualified beneficiary'' means an individual who is all of the following:

(A) A nonresident on the signing date of the voluntary disclosure agreement and a nonresident during each of the six taxable years ending immediately preceding the signing date of the voluntary disclosure agreement.

(B) A beneficiary of a qualified trust that has applied for a voluntary disclosure agreement under this article under which all material facts pertinent to the beneficiary's liability would be disclosed on that trust's voluntary disclosure agreement as required under clause (i) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 19191.

(7) Notwithstanding paragraph (6), subparagraph (B) of paragraph (1) of subdivision (d) of Section 19191 shall not apply to any penalties or additions to tax attributable to income other than income from the trust that filed an application under this article.

(b) ''Signing date'' of the voluntary disclosure agreement means the date on which a person duly authorized by the Franchise Tax Board signs the agreement.

(c) The amendments to this section made by Chapter 954 of the Statutes of 1996 shall apply to taxable years beginning on or after January 1, 1997.

(d) The amendments to this section made by the act adding this subdivision shall apply to voluntary disclosure agreements entered into on or after January 1, 2002.

SEC. 12. Section 19306 of the Revenue and Taxation Code is amended to read:

19306. (a) No credit or refund shall be allowed or made after a period ending four years from the date the return was filed (if filed within the time prescribed by Section 18567 or 18604, whichever is applicable), four years from the last day prescribed for filing the return (determined without regard to any extension of time for filing the return), or after one year from the date of the overpayment, whichever period expires later, unless before the expiration of that period a claim therefor is filed by the taxpayer, or unless before the expiration of that period the Franchise Tax Board allows a credit, makes a refund, or mails a notice of proposed overpayment on a preprinted form prescribed by the Franchise Tax Board.

(b) The amendments to this section by the act adding this subdivision shall be applied to all claims and refunds, without regard to taxable year, for which the statute of limitations has not expired on the date that this act takes effect.

SEC. 13. Section 19311 of the Revenue and Taxation Code is amended to read:

19311. (a) (1) If a change or correction is made or allowed by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, a claim for credit or refund resulting from the adjustment may be filed by the taxpayer within two years from the date of the final federal determination (as defined in Section 18622), or within the period provided in Section 19306, 19307, or 19308, whichever period expires later.

(2) Within two years of the date of the final determination (as defined in Section 18622) or within the period provided in Section 19306, 19307, or 19308, whichever period expires later, the Franchise Tax Board may allow a credit, make a refund, or mail to the taxpayer a notice of proposed overpayment resulting from the final federal determination.

(b) (1) Except as provided in paragraph (2), this section shall apply to any federal determination that becomes final on or after January 1, 1993.

(2) The amendments made by the act adding this paragraph shall apply, without regard to taxable year, to federal determinations that become final on or after the effective date of the act adding this paragraph.

SEC. 14. Section 19378 of the Revenue and Taxation Code is amended to read:

19378. (a) The Franchise Tax Board shall determine the amount of the contracting costs incurred under Section 19377 and notify the Controller of that amount which shall be transferred from the Personal Income Tax Fund or the Corporation Tax Fund to the Delinquent Tax Collection Fund, which is hereby created.

(b) The Controller shall transfer that amount determined pursuant to subdivision (a) from the Delinquent Tax Collection Fund to the Franchise Tax Board for reimbursement of its contracting costs. The moneys remaining in the Delinquent Tax Collection Fund after disbursements shall be transferred to the Personal Income Tax Fund or the Corporation Tax Fund by the Controller upon notification by the Franchise Tax Board. Notwithstanding Section 13340 of the Government Code, the moneys transferred pursuant to this section are hereby continuously appropriated, without regard to fiscal years.

(c) The funds generated through this section shall not be used in place of funds from other sources that are available for appropriation to the Franchise Tax Board.

(d) This section shall become operative on July 1, 1993.

SEC. 15. Section 19443 of the Revenue and Taxation Code is amended to read:

19443. (a) (1) The Executive Officer and Chief Counsel of the Franchise Tax Board, jointly, or their delegates, may compromise any

final tax liability in which the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the Franchise Tax Board, upon recommendation by its executive officer and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved by the Franchise Tax Board, itself, within 45 days of the submission of the recommendation shall be deemed approved.

(3) The Franchise Tax Board, itself, may by resolution delegate to the executive officer and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500) but less than ten thousand dollars ($10,000).

(b) For purposes of this section, ''a final tax liability'' means any final tax liability arising under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) For an amount to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that the:

(A) Amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income, and

(B) Taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The Franchise Tax Board shall have determined that acceptance of the compromise is in the best interest of the state.

(d) A determination by the Franchise Tax Board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(e) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the Franchise Tax Board shall notify the taxpayer in writing.

(f) In the case of a joint and several liability, the acceptance of an offer in compromise from one liable spouse shall not relieve the other spouse from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(g) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the Executive Officer

of the Franchise Tax Board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax, and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or the national defense. No list shall be prepared and no releases distributed by the Franchise Tax Board in connection with these statements.

(h) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The Franchise Tax Board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the Franchise Tax Board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to either:

(A) Comply with any of the terms and conditions relative to the offer.

(B) File subsequent required returns and pay subsequent final tax liabilities within 20 days after the Franchise Tax Board issues notice and demand to the person stating that the continued failure to file or pay the tax may result in rescission of the compromise.

(i) This section shall become operative on the effective date of the act adding this section without regard to the taxable year at issue.

SEC. 16. Section 19604 of the Revenue and Taxation Code is amended to read:

19604. (a) Except for fees received for services under Section 23305e, all moneys and remittances received by the Franchise Tax Board as amounts imposed under Part 11 (commencing with Section 23001), and related penalties, additions to tax, fees, and interest imposed under this part, shall be deposited in a special fund in the State Treasury, to be designated the Corporation Tax Fund. The moneys in the fund shall, upon the order of the Controller, be drawn therefrom for the purpose of

making refunds under this part or be transferred into the General Fund. All undelivered refund warrants shall be redeposited into the Corporation Tax Fund upon receipt by the Controller. Fees received for services under Section 23305e shall be treated as reimbursement of the Franchise Tax Board's costs and shall be deposited into the General Fund.

(b) Notwithstanding Section 13340 of the Government Code, all moneys in the Corporation Tax Fund are hereby continuously appropriated, without regard to fiscal year, to the Franchise Tax Board for purposes of making all payments as provided in this section.

SEC. 17. Section 19607 of the Revenue and Taxation Code is amended to read:

19607. All moneys and remittances received by the Franchise Tax Board as amounts imposed under Sections 17935, 17941, and 17948 and related penalties, additions to tax, interest, and other related amounts imposed under this part, shall be deposited, after clearance of remittances, in the State Treasury and credited to the Corporation Tax Fund.

SEC. 18. Section 19705 of the Revenue and Taxation Code is amended to read:

19705. (a) Any person who does any of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned not more than three years, or both, together with the costs of investigation and prosecution:

(1) Willfully makes and subscribes any return, statement, or other document, that contains or is verified by a written declaration that it is made under penalty of perjury, and he or she does not believe to be true and correct as to every material matter.

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Personal Income Tax Law or the Corporation Tax Law, of a return, affidavit, claim, or other document, that is fraudulent or is false as to any material matter, whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Personal Income Tax Law or the Corporation Tax Law, or by any regulation pursuant to that law, or procures the same to be falsely or fraudulently executed or advises, aids in, or connives at that execution.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 5 (commencing with Section 19201); or

Chapter 8 (commencing with Section 688.010) of Division 1 of, and Chapter 5 (commencing with Section 706.010) of Division 2 of, Title 9 of the Code of Civil Procedure, with intent to evade or defeat the assessment or collection of any tax, additions to tax, penalty, or interest imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(5) In connection with any settlement under Section 19442, or offer of that settlement, or in connection with any closing agreement under Section 19441 or offer to enter into that agreement, or compromise under Section 19443, or offer of that compromise, willfully does any of the following:

(A) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(B) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(b) In the case of a corporation, the fifty thousand dollars ($50,000) limitation specified in subdivision (a) shall be increased to two hundred thousand dollars ($200,000).

(c) The fact that an individual's name is signed to a return, statement, or other document filed, including a return, statement, or other document filed using electronic technology pursuant to Section 18621.5, shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him or her.

(d) For purposes of this section, ''person'' means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or which owns or controls the taxpayer, directly or indirectly.

(e) The changes made to this section by the act adding this subdivision apply to offers made on or after January 1, 1999.

SEC. 19. Section 21006 of the Revenue and Taxation Code is amended to read:

21006. (a) The board shall perform annually a systematic identification of areas of recurrent taxpayer noncompliance and shall report its findings to the Legislature on October 1 of each year.

(b) As part of the identification process described in subdivision (a), the board shall do both of the following:

(1) Compile and analyze sample data from its audit process, including, but not limited to, all of the following:

(A) The statute or regulation violated by the taxpayer.

(B) The amount of tax involved.

(C) The industry or business engaged in by the taxpayer.

(D) The number of years covered in the audit period.

(E) Whether professional tax preparation assistance was utilized by the taxpayer.

(F) Whether income tax or bank and corporation tax returns were filed by the taxpayer.

(2) Conduct an annual hearing before the board itself where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Personal Income Tax Law or the Corporation Tax Law which may further facilitate achievement of the legislative findings.

(c) The board shall include in its report recommendations for improving taxpayer compliance and uniform administration, including, but not limited to, all of the following:

(1) Changes in statute or board regulations.

(2) Improvement of training of board personnel.

(3) Improvement of taxpayer communication and education.

(4) Increased enforcement capabilities.

SEC. 20. Section 21027 of the Revenue and Taxation Code is amended to read:

21027. (a) (1) For purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), Part 11 (commencing with Section 23001), or this part or any other law that is applicable to the mailing of any returns, payments, or any other items required to be filed under Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), Part 11 (commencing with Section 23001), or this part, any reference in Section 11003 of the Government Code to the United States mail shall be treated as including a reference to any designated delivery service, and any reference in that section to a post office cancellation mark shall be treated as including a reference to any date recorded electronically by a designated delivery service, kept in the regular course of the designated delivery service's business, or marks on the cover in which any item is to be delivered to the board that indicate the date on which the item was given to the designated delivery service for delivery.

(2) For purposes of this section, ''designated delivery service'' means any delivery service provided by a trade or business if that service is designated by the Secretary of the Treasury under the authority of Section 7502(f) of the Internal Revenue Code, as amended by Public Law 104-168.

(b) As revised by Treasury Decision 8932, January 10, 2001, regulations of the Secretary of the Treasury under the authority of Section 7502(c)(2) of the Internal Revenue Code (relating to prima facie

evidence of delivery and postmark date for electronic filing) shall be applicable for prima facie evidence of delivery and the postmark date for purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), Part 11 (commencing with Section 23001), this part, or Section 11003 of the Government Code.

SEC. 21. The heading of Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code is amended to read:

PART 11. CORPORATION TAX LAW

SEC. 22. Section 23001 of the Revenue and Taxation Code is amended to read:

23001. This part is known and may be cited as the Corporation Tax Law.

SEC. 23. Section 23040.1 of the Revenue and Taxation Code is amended to read:

23040.1. (a) Notwithstanding Sections 23040 and 25101, income derived from or attributable to sources within this state shall not include:

(1) The distributive share of interest, dividends, and gains from the sale or exchange of qualifying investment securities derived by a corporation that is a partner in a partnership that qualifies as an investment partnership under Section 17955, whether or not the partnership has a usual place of business in this state, if the income from the partnership is the corporation's only income derived from or attributable to sources within this state.

(2) Income, gain, or loss from stocks or securities received by an alien corporation whose sole activities in this state involve trading in those stocks or securities for the corporation's own account within the meaning of Section 864(b)(2)(A)(ii) of the Internal Revenue Code, whether the trading is done by the corporation or its employees or through a resident broker, commission agent, custodian, or other agent, and whether or not any employee or agent has discretionary authority to make decisions in effecting the transactions. This paragraph does not apply to a dealer in stocks or securities.

(b) (1) Paragraph (1) of subdivision (a) shall not apply to a corporation that participates in the management of the investment activities of the investment partnership or that is engaged in a unitary business with another corporation or partnership that participates in the management of the investment activities of the partnership or has income derived from or attributable to sources within this state other than income described in paragraph (1) of subdivision (a).

(2) Paragraph (2) of subdivision (a) does not apply to an alien corporation that itself has, or that is engaged in a unitary business with another corporation that has, income derived from or attributable to

sources within this state other than income described in paragraph (2) of subdivision (a).

(c) An alien corporation (other than a dealer in stocks or securities) trading in stocks or securities for its own account, as described in paragraph (2) of subdivision (a), is not doing business in this state for purposes of Chapter 2 of this part.

(d) For purposes of this section:

(1) ''Alien corporation'' means a corporation organized under the laws of a country, or any political subdivision thereof, other than the United States.

(2) ''Dealer in stocks or securities'' means a dealer in stocks or securities for purposes of Section 864(b)(2)(A)(ii) of the Internal Revenue Code.

(3) ''Investment partnership'' means a partnership that meets both of the following requirements:

(A) No less than 90 percent of the partnership's cost of its total assets consist of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry on its activities as an investment partnership.

(B) No less than 90 percent of its gross income consists of interest, dividends, and gains from the sale or exchange of qualifying investment securities.

(4) (A) ''Qualifying investment securities'' include all of the following:

(i) Common stock, including preferred or debt securities convertible into common stock, and preferred stock.

(ii) Bonds, debentures, and other debt securities.

(iii) Foreign and domestic currency deposits or equivalents and securities convertible into foreign securities.

(iv) Mortgage- or asset-backed securities secured by federal, state, or local governmental agencies.

(v) Repurchase agreements and loan participations.

(vi) Foreign currency exchange contracts and forward and futures contracts on foreign currencies.

(vii) Stock and bond index securities and futures contracts, and other similar financial securities and futures contracts on those securities.

(viii) Options for the purchase or sale of any of the securities, currencies, contracts, or financial instruments described in clauses (i) to (vii), inclusive.

(ix) Regulated futures contracts.

(B) ''Qualifying investment securities'' does not include an interest in a partnership unless that partnership is itself an investment partnership.

(5) ''Stocks or securities'' has the same meaning as applies to that phrase as used in Section 864(b)(2)(A)(ii) of the Internal Revenue Code.

(e) The amendments made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1999.

SEC. 24. Section 23051.7 of the Revenue and Taxation Code is amended to read:

23051.7. (a) The enactment of the act adding this section to the code shall not deprive any taxpayer of any carryover of a credit, excess contribution, or loss to which that taxpayer was entitled under this part, including all amendments enacted prior to January 1, 1987.

(b) The carryover of the credit, excess contribution, or loss shall be allowed to be carried forward under the act adding this section to the code for the same period of time as the taxpayer would have been entitled to carry that item forward under prior law.

(c) For purposes of applying the provisions of the act adding this section to the code, the basis or recomputed basis of any asset acquired prior to January 1, 1987, shall be determined under the law at the time the asset was acquired and any adjustments to basis shall be computed as follows:

(1) Any adjustments to basis for income years beginning prior to January 1, 1987, shall be computed under applicable provisions of this part, including all amendments enacted prior to January 1, 1987; and

(2) Any adjustments to basis for taxable years beginning on or after January 1, 1987, shall be computed under the applicable provisions of the act adding this section to the code.

(d) For income years beginning on or after January 1, 1987, and before January 1, 1988, references in this part to ''alternative minimum tax'' shall be deemed to be references to the ''tax on preference income.''

SEC. 25. Section 23055 of the Revenue and Taxation Code is amended to read:

23055. Any provision of this part which refers to the application of any portion of this part to a prior period (or which depends upon the application to a prior period of any portion of this part) shall, when appropriate and consistent with the purpose of such provision, be deemed to refer to (or depend upon the application of) the corresponding provision of Part 11 of Division 2 of the Revenue and Taxation Code or of any other corporation tax laws as were applicable to the prior period.

SEC. 26. The heading of Chapter 2 (commencing with Section 23101) of Part 11 of Division 2 of the Revenue and Taxation Code is amended to read:

CHAPTER 2. THE CORPORATION FRANCHISE TAX

SEC. 27. Section 23182 of the Revenue and Taxation Code is amended to read:

23182. The tax imposed under this part upon banks and financial corporations is in lieu of all other taxes and licenses, state, county and municipal, upon the said banks and financial corporations except taxes upon their real property, local utility user taxes, sales and use taxes, state energy resources surcharge, state emergency telephone users surcharge, and motor vehicle and other vehicle registration license fees and any other tax or license fee imposed by the state upon vehicles, motor vehicles or the operation thereof.

The changes in this section made by the 1979–80 Legislature with respect to sales and use taxes apply to taxable years beginning on and after January 1, 1980, and the remaining changes apply to taxable years beginning on and after January 1, 1981.

SEC. 28. Section 23608.2 of the Revenue and Taxation Code is amended to read:

23608.2. (a) For taxable years beginning on or after January 1, 1997, there shall be allowed as a credit against the ''tax,'' as defined by Section 23036, an amount, subject to Section 42(h)(1) of the Internal Revenue Code, that is otherwise equal to the lesser of 50 percent of the eligible costs, as determined under subdivision (b), or the amount allocated under paragraph (2) of subdivision (e).

(b) (1) For purposes of this section, the ''eligible costs'' shall be equal to the total finance costs, construction costs, excavation costs, installation costs, and permit costs paid or incurred to construct or rehabilitate farmworker housing. ''Eligible costs'' include, but are not limited to, improvements to ensure compliance with laws governing access for persons with disabilities and costs related to reducing utility expenses. Noneligible costs include land and those costs financed by grants and below-market financing.

(2) For purposes of paragraph (1), construction or rehabilitation of the farmworker housing shall have commenced on or after January 1, 1997.

(3) Notwithstanding any provision of this part, eligible costs shall not include any costs paid or incurred prior to January 1, 1997.

(c) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the taxpayer first obtains a certification from the committee that the amounts described in subdivision (b) qualify for the credit under this section and the total amount of the credit allocated to the taxpayer pursuant to the Farmworker Housing Assistance Program.

(d) The taxpayer shall do all of the following:

(1) Apply to the committee for credit certification.

(2) Retain a copy of the certification.

(3) Make the certification available to the Franchise Tax Board upon request.

(e) The committee shall do all of the following:

(1) Provide forms and instructions for applications for credit certification, as specified pursuant to the Farmworker Housing Assistance Program.

(2) Accept applications and issue a certificate to the taxpayer that includes a certification as to the eligible costs described in subdivision (b) that qualify for the credit and the total amount of the credit to which the taxpayer is entitled for the taxable year. Credit in excess of the amount necessary to make the project feasible shall not be allocated. Credits shall be allocated through a minimum of one competitive funding round per year.

(3) Obtain the taxpayer's taxpayer identification number, or each shareholder's taxpayer identification number in the case of an S corporation, for tax administration purposes.

(4) Provide an annual listing to the Franchise Tax Board, in the form and manner agreed upon by the Franchise Tax Board and the committee, containing the names, taxpayer identification numbers pursuant to paragraph (3), eligible costs, and total amount of credit certified to each taxpayer.

(f) For purposes of this section:

(1) ''Compliance period'' means, with respect to any farmworker housing, the period of 30 consecutive taxable years, beginning with the taxable year in which the credit is allowable.

(2) ''Construct or rehabilitate'' includes reconstruction, but does not include any costs related to acquisition or refinancing of property or structures thereon.

(3) ''Farmworker Housing Assistance Program'' means Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 of the Health and Safety Code.

(4) ''Qualified farmworker housing'' means housing located within this state which satisfies the requirements of the Farmworker Housing Assistance Program. The housing may be vacant or occupied, and it need not be licensed pursuant to the Employee Housing Act at the time of the initiation of construction or rehabilitation.

(5) ''Committee'' means the California Tax Credit Allocation Committee as defined in Section 50199.7 of the Health and Safety Code.

(6) ''Qualified accountant'' means an accountant licensed or certified in this state who is neither an employee of the taxpayer, nor related to the taxpayer within the meaning of Section 267 of the Internal Revenue Code.

(g) No deduction or other credit shall be allowed under this part or Part 10 (commencing with Section 17001) to the extent of any eligible costs, as defined in subdivision (b), that are taken into account in computing the credit allowed under this section.

(h) The farmworker housing tax credit shall not be allowed unless the taxpayer:

(1) Constructs or rehabilitates the property subject to the covenants, conditions, and restrictions imposed by this section and pursuant to the Farmworker Housing Assistance Program, which shall include, but not necessarily be limited to, a requirement that the taxpayer obtain, for approval by the committee, a construction cost audit and certification of eligible costs from a qualified accountant.

(2) Subsequent to construction or rehabilitation of the farmworker housing, owns or operates the farmworker housing pursuant to the requirements of this section, or ensures the ownership and operation of the farmworker housing pursuant to the requirements of this section.

(i) The requirements of this section shall be set forth in a written agreement between the committee and the taxpayer. The agreement shall include, but not necessarily be limited to, the requirements set forth in the Farmworker Housing Assistance Program.

(j) In the case where the credit allowed by this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit has been exhausted.

(k) (1) In the case of any disqualifying event, as defined in paragraph (2), there shall be added to the ''tax,'' as defined in Section 23036, for the taxable year in which the disqualifying event occurs, the recapture amount computed under paragraph (3) and the interest amount computed under paragraph (4).

(2) For purposes of this subdivision, ''disqualifying event'' shall mean:

(A) The committee determines that the certification provided under subdivision (e) was obtained by fraud or misrepresentation.

(B) The taxpayer fails to comply with the requirements of the Farmworker Housing Assistance Program, or any other requirement imposed under this section.

(3) For purposes of this subdivision, ''recapture amount'' means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the entire amount of any credit previously allowed under this section.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), an amount determined by multiplying the entire amount of the credit previously allowed under this section by a fraction,

the numerator of which is the number of years remaining in the compliance period and the denominator of which is 30.

(4) For purposes of this subdivision, ''interest amount'' means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the amount of interest computed using the adjusted annual rate established in Section 19521 from the due date of the return for each taxable year in which the credit was claimed to the date of payment of the additional tax resulting from the application of this subdivision.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), zero.

(*l*) The annual amount of credit granted pursuant to this section and Sections 17053.14 and 23608.3 shall not exceed five hundred thousand dollars ($500,000), provided that the aggregate amount of the credit granted pursuant to this section and Sections 17053.14 and 23608.3 for the calendar year 1998 and thereafter may exceed five hundred thousand dollars ($500,000) per calendar year by an amount equal to any unallocated credits under this section and Sections 17053.14 and 23608.3 for the preceding calendar year or years.

SEC. 29. Section 23609 of the Revenue and Taxation Code is amended to read:

23609. For each taxable year beginning on or after January 1, 1987, there shall be allowed as a credit against the ''tax'' (as defined by Section 23036) an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) For each taxable year beginning before January 1, 1997, both of the following modifications shall apply:

(1) The reference to ''20 percent'' in Section 41(a)(1) of the Internal Revenue Code is modified to read ''8 percent.''

(2) The reference to ''20 percent'' in Section 41(a)(2) of the Internal Revenue Code is modified to read ''12 percent.''

(b) (1) For each taxable year beginning on or after January 1, 1997, and before January 1, 1999, both of the following modifications shall apply:

(A) The reference to ''20 percent'' in Section 41(a)(1) of the Internal Revenue Code is modified to read ''11 percent.''

(B) The reference to ''20 percent'' in Section 41(a)(2) of the Internal Revenue Code is modified to read ''24 percent.''

(2) For each taxable year beginning on or after January 1, 1999, and before January 1, 2000, both of the following shall apply:

(A) The reference to ''20 percent'' in Section 41(a)(1) of the Internal Revenue Code is modified to read ''12 percent.''

(B) The reference to ''20 percent'' in Section 41(a)(2) of the Internal Revenue Code is modified to read ''24 percent.''

(3) For each taxable year beginning on or after January 1, 2000, both of the following shall apply:

(A) The reference to ''20 percent'' in Section 41(a)(1) of the Internal Revenue Code is modified to read ''15 percent.''

(B) The reference to ''20 percent'' in Section 41(a)(2) of the Internal Revenue Code is modified to read ''24 percent.''

(c) (1) With respect to any expense paid or incurred after the operative date of Section 6378, Section 41(b)(1) of the Internal Revenue Code is modified to exclude from the definition of ''qualified research expense'' any amount paid or incurred for tangible personal property that is eligible for the exemption from sales or use tax provided by Section 6378.

(2) ''Qualified research'' and ''basic research'' shall include only research conducted in California.

(d) The provisions of Section 41(e)(7)(A) of the Internal Revenue Code, shall be modified so that ''basic research,'' for purposes of this section, includes any basic or applied research including scientific inquiry or original investigation for the advancement of scientific or engineering knowledge or the improved effectiveness of commercial products, except that the term does not include any of the following:

(1) Basic research conducted outside California.

(2) Basic research in the social sciences, arts, or humanities.

(3) Basic research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors.

(4) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(e) (1) In the case of a taxpayer engaged in any biopharmaceutical research activities that are described in codes 2833 to 2836, inclusive, or any research activities that are described in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, or any other biotechnology research and development activities, the provisions of Section 41(e)(6) of the Internal Revenue Code shall be modified to include both of the following:

(A) A qualified organization as described in Section 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an institution of higher education as described in Section 3304(f) of the Internal Revenue Code.

(B) A charitable research hospital owned by an organization that is described in Section 501(c)(3) of the Internal Revenue Code, is exempt from taxation under Section 501(a) of the Internal Revenue Code, is not a private foundation, is designated a ''specialized laboratory cancer

center,'' and has received Clinical Cancer Research Center status from the National Cancer Institute.

(2) For purposes of this subdivision:

(A) ''Biopharmaceutical research activities'' means those activities that 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 that make use of chemical compounds to produce commercial products.

(B) ''Other biotechnology research and development activities'' means research and development activities consisting of the application of recombinant DNA technology to produce commercial products, as well as research and development activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(f) In the case where the credit allowed by this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) For each taxable year beginning on or after January 1, 1998, the reference to ''Section 501(a)'' in Section 41(b)(3)(C) of the Internal Revenue Code, relating to contract research expenses, is modified to read ''this part or Part 10 (commencing with Section 17001).''

(h) (1) For each taxable year beginning on or after January 1, 1998, and before January 1, 2000:

(A) The reference to ''1.65 percent'' in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read ''one and thirty-two hundredths of one percent.''

(B) The reference to ''2.2 percent'' in Section 41(c)(4)(A)(ii) of the Internal Revenue Code is modified to read ''one and seventy-six hundredths of one percent.''

(C) The reference to ''2.75 percent'' in Section 41(c)(4)(A)(iii) of the Internal Revenue Code is modified to read ''two and two-tenths of one percent.''

(2) For each taxable year beginning on or after January 1, 2000:

(A) The reference to ''1.65 percent'' in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read ''one and forty-nine hundredths of one percent.''

(B) The reference to ''2.2 percent'' in Section 41(c)(4)(A)(ii) of the Internal Revenue Code is modified to read ''one and ninety-eight hundredths of one percent.''

(C) The reference to ''2.75 percent'' in Section 41(c)(4)(A)(iii) of the Internal Revenue Code is modified to read ''two and forty-eight hundredths of one percent.''

(3) Section 41(c)(4)(B) shall not apply and in lieu thereof an election under Section 41(c)(4)(A) of the Internal Revenue Code may be made for any taxable year of the taxpayer beginning on or after January 1, 1998. That election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Franchise Tax Board.

(4) Section 41(c)(6) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business that is delivered or shipped to a purchaser within this state, regardless of f.o.b. point or any other condition of the sale.

(i) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.

(j) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any taxable year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other taxable years under the rules of subdivision (f), except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent taxable year.

SEC. 30. Section 23610.5 of the Revenue and Taxation Code is amended to read:

23610.5. (a) (1) There shall be allowed as a credit against the ''tax'' (as defined by Section 23036) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code of 1986, except as otherwise provided in this section.

(2) ''Taxpayer,'' for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) ''Housing sponsor,'' for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor has been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It qualifies for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall, upon request, provide a copy of the certification to the Franchise Tax Board.

(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(E) For buildings located in designated difficult development areas or qualified census tracts as defined in Section 42(d)(5)(C) of the Internal Revenue Code, credits may be allocated under this section in the amounts prescribed in subdivision (c), provided that the amount of credit allocated under Section 42 of the Internal Revenue Code is computed on 100 percent of the qualified basis of the building.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term ''applicable percentage'' means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term ''applicable percentage'' means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is ''at risk of conversion,'' the term ''applicable percentage'' means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion,'' with respect to an existing building means a building that satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the building is eligible for prepayment under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the two calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term ''qualified low-income housing project'' as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, shall be equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity, which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note.

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period.

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the ''floor space fraction,'' as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed at any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term ''credit period'' as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four taxable years" for ''10 taxable years.''

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the taxable years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 17058 shall be an amount equal to the sum of the following:

(1) Fifty million dollars ($50,000,000) for the 1999 calendar year and each calendar year thereafter.

(2) The unused housing credit ceiling, if any, for the preceding calendar years.

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term ''compliance period'' as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and this agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, provided that the agreement includes all of the following provisions:

(1) A term not less than the compliance period.

(2) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto, and that allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to

the building the right to enforce the regulatory agreement in any state court.

(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(6) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(7) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(8) A provision that the remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling that may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate that there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if both of the following apply:

(i) The project serves the lowest income tenants at rents affordable to those tenants.

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee, of all residential units are low-income units with three and more bedrooms.

(ii) Projects providing single-room occupancy units serving very low income tenants.

(iii) Existing projects that are ''at risk of conversion,'' as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section, Section 12206, and Section 17058 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term ''secretary'' shall be replaced by the term ''California Franchise Tax Board.''

(*l*) In the case where the state credit allowed under this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(q) (1) A corporation may elect to assign any portion of any credit allowed under this section to one or more affiliated corporations for each taxable year in which the credit is allowed. For purposes of this subdivision, ''affiliated corporation'' has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last day of the taxable year in which the credit is allowed, except that ''100 percent'' is substituted for ''more than 50 percent'' wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993, and ''voting common stock'' is substituted for ''voting stock'' wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993.

(2) The election provided in paragraph (1):

(A) May be based on any method selected by the corporation that originally receives the credit.

(B) Shall be irrevocable for the taxable year the credit is allowed, once made.

(C) May be changed for any subsequent taxable year if the election to make the assignment is expressly shown on each of the returns of the affiliated corporations that assign and receive the credits.

(r) Any unused credit may continue to be carried forward, as provided in subdivision (k), until the credit has been exhausted.

This section shall remain in effect on or after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect.

(s) The amendments to this section made by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1994, except that paragraph (1) of subdivision (q), as amended, shall apply to taxable years beginning on or after January 1, 1993.

SEC. 31. Section 23622.8 of the Revenue and Taxation Code is amended to read:

23622.8. (a) For each taxable 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 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 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 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.) or its successor.

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985, or its successor, 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, or its successor, 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 0211 to 0291, inclusive, Code 0723, or 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 workforce 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 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 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 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 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 taxable 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 taxable 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 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) 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 taxable years, as if it were an amount exceeding the ''tax'' for the taxable 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. 32. Section 23630 of the Revenue and Taxation Code is amended to read:

23630. (a) There shall be allowed as a credit against the ''tax,'' as defined in Section 23036, an amount equal to 55 percent of the fair market value of any qualified contribution made on or after January 1, 2000, and prior to December 31, 2005, by the taxpayer during the taxable year to the state, any local government, or any designated nonprofit organization, pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(b) For purposes of this section, ''qualified contribution'' means a contribution of property, as defined in Section 37002 of the Public Resources Code, that has been approved for acceptance by the Wildlife Conservation Board pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(c) In the case of any passthrough entity, the fair market value of any qualified contribution approved for acceptance under Division 28 (commencing with Section 37000) of the Public Resources Code shall be passed through to the partners or shareholders of the passthrough entity in accordance with their interest in the passthrough entity as of the

date of the qualified contribution. For purposes of this subdivision, the term ''passthrough entity'' means any partnership or S corporation.

(d) If the credit allowed by this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and the succeeding seven years if necessary, until the credit is exhausted.

(e) This credit shall be in lieu of any other credit or deduction that the taxpayer may otherwise claim pursuant to this part with respect to the property or any interest therein that is contributed.

SEC. 33. Section 23645 of the Revenue and Taxation Code is amended to read:

23645. (a) For each taxable 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 taxable 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 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 that 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 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 taxable 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 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 the credit otherwise allowed under this section and Section 23646, including any credit carryovers from prior years, that may reduce the ''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) 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 shall first 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 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 ''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 tax for the taxpayer's second taxable year.

(h) If the taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(i) The amendments made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1998.

SEC. 34. Section 23646 of the Revenue and Taxation Code is amended to read:

23646. (a) For each taxable 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

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 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 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.), or its successor.

(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 taxable 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 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 qualified taxpayer that 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 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 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) For qualified disadvantaged individuals or qualified displaced employees hired on or after January 1, 2001, the taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, the administrative entity of the local county or city for the federal Job Training Partnership Act, or its successor, the local county GAIN office, or social services agency, as appropriate, a certification that provides that a qualified disadvantaged individual or qualified displaced employee meets the eligibility requirements specified in subparagraph (C) of paragraph (4) of subdivision (b) or subparagraph (A) of paragraph (6) 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, 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 (e)) 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.

(e) (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 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 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 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 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 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 tax for the taxpayer's second taxable year.

(f) 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.

(g) 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 (h) or (i).

(h) In the case where the credit otherwise allowed under this section exceeds the ''tax'' for the taxable 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 taxable years possible.

(i) (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 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 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 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 ''tax'' for the taxable year, as provided in subdivision (h).

(j) 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. 35. Section 23649 of the Revenue and Taxation Code is amended to read:

23649. (a) (1) A qualified taxpayer shall be allowed a credit against the ''tax,'' as defined in Section 23036, equal to 6 percent of the qualified cost of qualified property that is placed in service in this state.

(2) In the case of any qualified costs paid or incurred on or after January 1, 1994, and prior to the first taxable year of the qualified taxpayer beginning on or after January 1, 1995, the credit provided under paragraph (1) shall be claimed by the qualified taxpayer on the qualified taxpayer's return for the first taxable year beginning on or after January 1, 1995. No credit shall be claimed under this section on a return filed for any taxable year commencing prior to the qualified taxpayer's first taxable year beginning on or after January 1, 1995.

(b) (1) For purposes of this section, ''qualified cost'' means any cost that satisfies each of the following conditions:

(A) Except as otherwise provided in this subparagraph, is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i). In the case of any qualified property constructed,

reconstructed, or acquired by the qualified taxpayer (or any person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) pursuant to a binding contract in existence on or prior to January 1, 1994, costs paid pursuant to that contract shall be subject to allocation as follows: contract costs shall be allocated to qualified property based on a ratio of costs actually paid prior to January 1, 1994, and total contract costs actually paid. ''Cost paid'' shall include, without limitation, contractual deposits and option payments. To the extent of cost allocated, whether or not currently deductible or depreciable for tax purposes, to a period prior to January 1, 1994, the cost shall be deemed allocated to property acquired before January 1, 1994, and is thus not a ''qualified cost.''

(B) Except as provided in paragraph (3) of subdivision (d) and subparagraph (B) of paragraph (4) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001).

(C) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(2) (A) For purposes of this subdivision, any contract entered into on or after January 1, 1994, that is a successor or replacement contract to a contract that was binding prior to January 1, 1994, shall be treated as a binding contract in existence prior to January 1, 1994.

(B) If a successor or replacement contract is entered into on or after January 1, 1994, and the subject of the successor or replacement contract relates both to amounts for the construction, reconstruction, or acquisition of qualified property described in the original binding contract and to costs for the construction, reconstruction, or acquisition of qualified property not described in the original binding contract, then the portion of those amounts described in the successor or replacement contract that were not described in the original binding contract shall not be treated as costs paid or incurred pursuant to a binding contract in existence on or prior to January 1, 1994, under subparagraph (A) of paragraph (1).

(3) (A) For purposes of this section, an option contract in existence prior to January 1, 1994, under which a qualified taxpayer (or any other person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) had an option to acquire qualified property, shall be treated as a binding contract under the rules in paragraph (2). For purposes of this subparagraph, an option contract shall not include an option under which the optionholder will forfeit an amount less than 10 percent of the fixed option price in the event the option is not exercised.

(B) For purposes of this section, a contract shall be treated as binding even if the contract is subject to a condition.

(4) For purposes of this subdivision, in the case of any qualified taxpayer engaged in those lines of business described in Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, ''the first taxable year beginning on or after January 1, 1998,'' shall be substituted for ''January 1, 1994,'' in each place in which it appears.

(c) (1) For purposes of this section, ''qualified taxpayer'' means any taxpayer engaged in those lines of business described in Codes 2011 to 3999, inclusive, or Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer shall be made at the entity level and any credit under this section or Section 17053.49 shall be allowed to the passthrough entity and passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, the term ''passthrough entity'' means any partnership or S corporation.

(3) The Franchise Tax Board may prescribe regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the effect of this section through splitups, shell corporations, partnerships, tiered ownership structures, sale-leaseback transactions, or otherwise.

(d) For purposes of this section, ''qualified property'' means property that is described as either of the following:

(1) Tangible personal property that is defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that is primarily used for any of the following:

(A) For the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required.

(B) In research and development.

(C) To maintain, repair, measure, or test any property described in this paragraph.

(D) For pollution control that meets or exceeds standards established by the state or by any local or regional governmental agency within the state.

(E) For recycling.

(2) Computers and computer peripheral equipment, as defined in Section 168(i)(2)(B) of the Internal Revenue Code, that is tangible personal property as defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in SIC Codes 7371 to 7373, inclusive, of the SIC Manual, 1987 edition, that is primarily used to develop or manufacture prepackaged software or custom software prepared to the special order of the purchaser who uses the program to produce and sell or license copies of the program as prepackaged software.

(3) The value of any capitalized labor costs that are directly allocable to the construction or modification of property described in paragraph (1) or (2).

(4) In the case of any qualified taxpayer engaged in manufacturing activities described in SIC Code 357 or 367, those activities related to biotechnology described in SIC Code 8731, those activities related to biopharmaceutical establishments only that are described in SIC Codes 2833 to 2836, inclusive, those activities related to space vehicles and parts described in SIC Codes 3761 to 3769, inclusive, those activities related to space satellites and communications satellites and equipment described in SIC Codes 3663 and 3812 (but only with respect to ''qualified property'' that is placed in service on or after January 1, 1996), or those activities related to semiconductor equipment manufacturing described in SIC Code 3559 (but only with respect to ''qualified property'' that is placed in service on or after January 1, 1997), ''qualified property'' also includes the following:

(A) Special purpose buildings and foundations that are constructed or modified for use by the qualified taxpayer primarily in a manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(B) The value of any capitalized labor costs that are directly allocable to the construction or modification of special purpose buildings and foundations that are used primarily in the manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(C) (i) For purposes of this paragraph, ''special purpose building and foundation'' means only a building and the foundation immediately underlying the building that is specifically designed and constructed or reconstructed for the installation, operation, and use of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the

real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subparagraph (A) (''qualified purpose'').

(ii) A building is specifically designed and constructed or modified for a qualified purpose if it is not economical to design and construct the building for the intended purpose and then use the structure for a different purpose.

(iii) For purposes of clause (i) and clause (vi), a building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for nonqualified purposes does not preclude the building from being a special purpose building. ''Incidental use'' means a use which is both related and subordinate to the qualified purpose. It will be conclusively presumed that a use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualified purpose.

(iv) In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subparagraph.

(v) To the extent that a building is not a special purpose building as defined above, but a portion of the building qualifies for treatment as a special purpose building, then all equipment which exclusively supports the qualified purpose occurring within that portion and which would qualify as Internal Revenue Code Section 1245 property if it were not a fixture or affixed to the building shall be treated as a cost of the portion of the building which qualifies for treatment as a special purpose building.

(vi) Buildings and foundations which do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to: buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the manufacturing process. A research facility shall not be considered to be used primarily prior to or after, or prior to and after, the manufacturing process if its purpose and use relate exclusively to the development and regulatory approval of the manufacturing process for specific biopharmaceutical products. A research facility which is used primarily in connection with the discovery of an organism from which a biopharmaceutical product or process is developed does not meet the requirements of the preceding sentence.

(5) Subject to the provisions in subparagraph (B) of paragraph (1) of subdivision (b), qualified property also includes computer software that is primarily used for those purposes set forth in paragraph (1) or (2) of this subdivision.

(6) Qualified property does not include any of the following:

(A) Furniture.

(B) Facilities used for warehousing purposes after completion of the manufacturing process.

(C) Inventory.

(D) Equipment used in the extraction process.

(E) Equipment used to store finished products that have completed the manufacturing process.

(F) Any tangible personal property that is used in administration, general management, or marketing.

(G) Any vehicle for which a credit is claimed pursuant to Section 17052.11 or 23603.

(e) For purposes of this section:

(1) ''Biopharmaceutical activities'' means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(2) ''Fabricating'' means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) ''Manufacturing'' means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(4) ''Other biotechnology activities'' means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(5) ''Primarily'' means tangible personal property used 50 percent or more of the time in an activity described in subdivision (d).

(6) ''Process'' means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling

activity of the qualified person and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(7) ''Processing'' means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(8) ''Refining'' means the process of converting a natural resource to an intermediate or finished product.

(9) ''Research and development'' means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(10) ''Small business'' means a qualified taxpayer that meets any of the following requirements during the taxable year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars ($50,000,000).

(B) Has net assets of less than fifty million dollars ($50,000,000).

(C) Has a total credit of less than one million dollars ($1,000,000).

(D) For taxable years beginning on or after January 1, 1997, is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and has not received regulatory approval for any product from the United States Food and Drug Administration.

(f) The credit allowed under subdivision (a) shall apply to qualified property that is acquired by or subject to lease by a qualified taxpayer, subject to the following special rules:

(1) A lessor of qualified property, irrespective of whether the lessor is a qualified taxpayer, shall not be allowed the credit provided under subdivision (a) with respect to any qualified property leased to another qualified taxpayer.

(2) For purposes of paragraphs (2) and (3) of subdivision (b), ''binding contract'' shall include any lease agreement with respect to the qualified property.

(3) (A) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is not treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(i) Except as provided by subparagraph (C) of this paragraph, subparagraphs (A) and (C) of paragraph (1) of subdivision (b) shall not apply.

(ii) Except as provided in subparagraph (B) and clause (iii), the ''qualified cost'' upon which the lessee shall compute the credit provided under this section shall be equal to the original cost to the lessor (within the meaning of Section 24912) of the qualified property that is the subject of the lease.

(iii) Except as provided in clause (iv), the requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied only if the lessor has made a timely election under either Section 6094.1 or subdivision (d) of Section 6244 and has paid sales tax reimbursement or use tax measured by the purchase price of the qualified property (within the meaning of paragraph (5) of subdivision (g) of Section 6006). For purposes of this subdivision and clause (iv), the amount of original cost to the lessor which may be taken into account under clause (ii) shall not exceed the purchase price upon which sales tax reimbursement or use tax has been paid under the preceding sentence or under clause (iv).

(iv) With respect to leases entered into between January 1, 1994, and the effective date of this clause, the lessor may elect to pay use tax measured by the purchase price of the property by reporting and paying the tax with the return of the lessor for the fourth calendar quarter of 1994. In computing the use tax under the preceding sentence, a credit shall be allowed under Part 1 (commencing with Section 6001) for all sales or use tax previously paid on the lease.

(B) For purposes of applying subparagraph (A) only, the following special rules shall apply:

(i) The original cost to the lessor of the qualified property shall be reduced by the amount of any original cost of that property that was taken into account by any predecessor lessee in computing the credit allowable under this section.

(ii) Clause (i) shall not apply in any case where the predecessor lessee was required to recapture the credit provided under this section pursuant to subdivision (g).

(iii) For purposes of this section only, in any case where a successor lessor has acquired qualified property from a predecessor lessor in a transaction not treated as a sale under Part 1 (commencing with Section 6001), the original cost to the successor lessor of the qualified property shall be reduced by the amount of the original cost of the qualified

property that was taken into account by any lessee of the predecessor lessor in computing the credit allowable under this section.

(C) In determining the original cost of any qualified property under this paragraph, only amounts paid or incurred by the lessor on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i), shall be taken into account. In the case of any qualified property constructed, reconstructed, or acquired by a lessor pursuant to a binding contract in existence on or prior to January 1, 1994, the allocation rule specified in subparagraph (A) of paragraph (1) of subdivision (b) shall apply in determining the original cost to the lessor of qualified property.

(D) Notwithstanding subparagraph (A), in the case of any leasing transaction for which the lessee is allowed the credit under this section and thereafter the lessee (or any party related to the lessee within the meaning of Section 267 or 318 of the Internal Revenue Code) acquires the qualified property from the lessor (or any successor lessor) within one year from the date the qualified property is first used by the lessee under the terms of the lease, the lessee's (or related party's) acquisition of the qualified property from the lessor (or successor lessor) shall be treated as a disposition by the lessee of the qualified property that was subject to the lease under subdivision (g).

(4) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(A) Subparagraph (A) of paragraph (1) of subdivision (b) shall be applied by substituting the term ''purchase'' for the term ''construction, reconstruction, or acquisition.''

(B) Subparagraph (C) of paragraph (1) of subdivision (b) shall apply.

(C) The requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied at the time that either the lessor or the qualified taxpayer pays sales or use tax under Part 1 (commencing with Section 6001).

(5) (A) In the case of any leasing transaction described in paragraph (3), the lessor shall provide a statement to the lessee specifying the amount of the lessor's original cost of the qualified property and the amount of that cost upon which a sales or use tax was paid within 45 days after the close of the lessee's taxable year in which the credit is allowable to the lessee under this section.

(B) The statement required under subparagraph (A) shall be made available to the Franchise Tax Board upon request.

(6) For purposes of this subdivision, in the case of any qualified taxpayer engaged in those lines of business described in Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987

edition, ''the first taxable year beginning on or after January 1, 1998,'' shall be substituted for ''January 1, 1994,'' in each place in which it appears. In addition, ''the effective date of this paragraph'' shall be substituted for ''the effective date of this clause'' and ''fourth calendar quarter of 1998'' shall be substituted for ''fourth calendar quarter of 1994.''

(g) No credit shall be allowed if the qualified property is removed from the state, is disposed of to an unrelated party, or is used for any purpose not qualifying for the credit provided in this section in the same taxable year in which the qualified property is first placed in service in this state. If any qualified property for which a credit is allowed pursuant to this section is thereafter removed from this state, disposed of to an unrelated party, or used for any purpose not qualifying for the credit provided in this section within one year from the date the qualified property is first placed in service in this state, the amount of the credit allowed by this section for that qualified property shall be recaptured by adding that credit amount to the net tax of the qualified taxpayer for the taxable year in which the qualified property is disposed of, removed, or put to an ineligible use. The sale of stock for which an election was made or deemed to have been made pursuant to Section 338(g) or 338(h)(10) of the Internal Revenue Code may not be treated as a disposition of qualified property to an unrelated party for purposes of this subdivision.

(h) In the case where the credit allowed by this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years as follows:

(1) Except as provided in paragraph (2), for the seven succeeding years if necessary, until the credit is exhausted.

(2) In the case of a small business, for the nine succeeding years, if necessary, until the credit is exhausted.

(i) (1) This section shall remain in effect until the date specified in paragraph (2) on which date this section shall cease to be operative, and as of that date is repealed.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, ''total employment'' means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

(j) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1997, except as provided in paragraph (3) of subdivision (d).

(k) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1998.

SEC. 36. Section 23772 of the Revenue and Taxation Code is amended to read:

23772. (a) For the purposes of this part—

(1) Except as provided in paragraph (2) every organization exempt from taxation under Section 23701 and every trust treated as a private foundation because of Section 4947(a)(1) of the Internal Revenue Code shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and any other information for the purpose of carrying out the laws under this part as the Franchise Tax Board may by rules or regulations prescribe, and shall keep any records, render under oath any statements, make any other returns, and comply with any rules and regulations as the Franchise Tax Board may from time to time prescribe. The return shall be filed on or before the 15th day of the fifth full calendar month following the close of the taxable year.

(2) Exceptions from filing—

(A) Mandatory exceptions—Paragraph (1) shall not apply to—

(i) Churches, their integrated auxiliaries, and conventions or association of churches,

(ii) Any organization (other than a private foundation as defined in Section 23709), the gross receipts of which in each taxable year are normally not more than twenty-five thousand dollars ($25,000), or

(iii) The exclusively religious activities of any religious order.

(B) Discretionary exceptions—The Franchise Tax Board may permit the filing of a simplified return for organizations based on either gross receipts or total assets or both gross receipts and total assets, or may permit the filing of an information statement (without fee), or may permit the filing of a group return for incorporated or unincorporated branches of a state or national organization where it determines that an information return is not necessary to the efficient administration of this part.

(3) An organization that is required to file an annual information return shall pay a filing fee of ten dollars ($10) on or before the due date for filing the annual information return (determined with regard to any extension of time for filing the return) required by this section. In case of failure to pay the fee on or before the due date unless it is shown that the failure is due to reasonable cause, the filing fee shall be twenty-five dollars ($25). All collection remedies provided in Article 5 (commencing with Section 18661) of Chapter 2 of Part 10.2 shall be

applicable to collection of the filing fee. However, the filing fee shall not apply to the organization described in paragraph (4).

(4) Paragraph (3) shall not apply to: (A) a religious organization exempt under Section 23701d; (B) an educational organization exempt under Section 23701d, if that organization normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on; (C) a charitable organization, or an organization for the prevention of cruelty to children or animals, exempt under Section 23701d, if that organization is supported, in whole or in part, by funds contributed by the United States or any state or political subdivision thereof, or is primarily supported by contributions of the general public; (D) an organization exempt under Section 23701d, if that organization is operated, supervised, or controlled by or in connection with a religious organization described in subparagraph (A).

(b) Every organization described in Section 23701d that is subject to the requirements of subdivision (a) shall furnish annually information, at the time and in the manner as the Franchise Tax Board may by rules or regulations prescribe, setting forth—

(1) Its gross income for the year,

(2) Its expenses attributable to gross income and incurred within the year,

(3) Its disbursements within the year for the purposes for which it is exempt,

(4) A balance sheet showing its assets, liabilities, and net worth as of the beginning of that year,

(5) The total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors,

(6) The names and addresses of its foundation manager (within the meaning of Section 4946 of the Internal Revenue Code) and highly compensated employees,

(7) The compensation and other payments made during the year to each individual described in paragraph (6),

(8) In the case of an organization with respect to which an election under Section 23704.5 is effective for the taxable year, the following amounts for that organization for that taxable year:

(A) The lobbying expenditures (as defined in Section 4911(c)(1) of the Internal Revenue Code).

(B) The lobbying nontaxable amount (as defined in Section 4911(c)(2) of the Internal Revenue Code).

(C) The grassroots expenditures (as defined in Section 4911(c)(3) of the Internal Revenue Code).

(D) The grassroots nontaxable amount (as defined in Section 4911(c)(4) of the Internal Revenue Code). For purposes of this

paragraph, if Section 23740(f) applies to the organization for the taxable year, the organization shall furnish the amounts with respect to the affiliated group as well as with respect to the organization.

(9) Such other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in Sections 23701a to 23701w, inclusive (other than Sections 23701d, 23701k, and 23701t), as the Franchise Tax Board may require to prevent either of the following:

(A) Diversion of funds from the organization's exempt purpose.

(B) Misallocation of revenue or expense, and

(10) Any other relevant information as the Franchise Tax Board may prescribe.

(c) In addition to the above annual return any organization which is required to file an annual report under Section 6056 of the Internal Revenue Code will furnish a copy of the report to the Franchise Tax Board at the time the annual return is due.

(d) For the purposes of this part—

(1) In the case of a failure to file a return required under this section on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause, there shall be paid (on notice and demand by the Franchise Tax Board and in the same manner as tax) by the exempt organization or trust failing so to file, five dollars ($5) for each month or part thereof during which the failure continues, but the total amount imposed hereunder on any organization for failure to file any return shall not exceed forty dollars ($40).

(2) The Franchise Tax Board may make written demand upon a private foundation failing to file under paragraph (1) of this subdivision or subdivision (c) specifying therein a reasonable future date by which the filing shall be made, and if the filing is not made on or before that date, and unless it is shown that failure so to file is due to reasonable cause, there shall be paid (on notice and demand by the Franchise Tax Board and in the same manner as tax) by the person failing so to file, in addition to the penalty prescribed in paragraph (1), a penalty of five dollars ($5) each month or part thereof after the expiration of the time specified in the written demand during which the failure continues, but the total amount imposed hereunder on all persons for the failure to file shall not exceed twenty-five dollars ($25). If more than one person is liable under this paragraph for a failure to file, all of those persons shall be jointly and severally liable with respect to the failure. The term ''person'' as used herein means any officer, director, trustee, employee, member, or other individual who is under a duty to perform the act in respect of which the violation occurs.

(e) The reporting requirements and penalties shall be applicable for taxable years beginning after December 31, 1970, except that the provisions of subparagraph (B) of paragraph (2) of subdivision (a) shall apply to taxable years ending after December 31, 1970.

SEC. 37. 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 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 the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) Sixty-five percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any 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 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 subdivision (e).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(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 any 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 (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 as provided in subdivision (e).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (e).

(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 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 taxable 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 taxable year in which the loss was incurred.

(d) Net operating loss carrybacks shall not be allowed.

(e) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, 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'' except as otherwise provided in paragraphs (2), (3), and (4).

(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, 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 ''10 taxable years'' in lieu of ''20 taxable years.''

(2) For any taxable year beginning before January 1, 2000, in the case of a ''new business,'' the ''five taxable years'' referred to 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 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 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 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 a taxable year

after the taxable 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 taxable 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 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 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.

(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 taxable year which may be carried forward to another taxable year.

(2) The amount of any loss carry forward which may be deducted in any taxable 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*) Except as otherwise provided, the amendments made by the act adding this subdivision shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 38. Section 24453 of the Revenue and Taxation Code is amended to read:

24453. Section 302(c)(2) of the Internal Revenue Code, relating to determining termination of interest, is modified to refer to the periods of limitation provided in ''Chapter 4 (commencing with Section 19001) and Chapter 5 (commencing with Section 19201) of Part 10.2,'' in lieu of ''Sections 6501 and 6502'' of the Internal Revenue Code and to refer to ''taxes imposed under the Personal Income Tax Law'' and the ''Corporation Tax Law,'' in lieu of ''Federal income tax.''

SEC. 39. Section 24472 of the Revenue and Taxation Code is amended to read:

24472. The amendments to Section 382 of the Internal Revenue Code made by Section 13226 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications of discharge of indebtedness provisions, shall apply to discharges occurring on or after January 1, 1996, in taxable years beginning on or after January 1, 1996.

SEC. 40. Section 30459.4 of the Revenue and Taxation Code is amended to read:

30459.4. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 41. Section 32402 of the Revenue and Taxation Code is amended to read:

32402. (a) Except as provided in subdivision (b) no refund shall be approved by the board after three years from the 15th day of the calendar month following the close of the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 32271), 3 (commencing with Section 32291) or 5 (commencing with Section 32311) of Chapter 6 after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period unless a claim for credit is filed with the board within that period, or unless the credit relates to a period for which a waiver is given pursuant to Section 32273.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 32273, if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

SEC. 42. Section 32474 of the Revenue and Taxation Code is amended to read:

32474. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 43. Section 40214 of the Revenue and Taxation Code is amended to read:

40214. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 44. Section 41174 of the Revenue and Taxation Code is amended to read:

41174. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 45. Section 43525 of the Revenue and Taxation Code is amended to read:

43525. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an

erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 46. Section 45652 of the Revenue and Taxation Code is amended to read:

45652. (a) Except as provided in subdivision (b), no refund shall be approved by the board after three years from the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 45201) of Chapter 3, after six months from the date the determinations have become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given pursuant to Section 45204.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 45204 if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

SEC. 47. Section 45870 of the Revenue and Taxation Code is amended to read:

45870. (a) A feepayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party

check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the feepayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the feepayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the feepayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the feepayer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 48. Section 46502 of the Revenue and Taxation Code is amended to read:

46502. (a) Except as provided in subdivision (b), no refund shall be approved by the board after three years from the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 46201), Article 3 (commencing with Section 46251) or Article 4 (commencing with Section 46301) of Chapter 3, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given pursuant to Section 46205.

(b) A refund may be approved by the board for any period for which a waiver is given pursuant to Section 46205 if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) If the board has made a determination under Article 2 (commencing with Section 46201), Article 3 (commencing with Section 46251), or Article 4 (commencing with Section 46301) of Chapter 3, and if a person's claim for refund was filed timely within the applicable

six-month period specified by subdivision (a) or (b), that claim for refund shall be deemed to also apply to that person's later payments in full or partial satisfaction of that determination.

SEC. 49. Section 46625 of the Revenue and Taxation Code is amended to read:

46625. (a) A feepayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees that are incurred by the feepayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with either a levy or instructions in a notice to withhold, and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. Bank charges include only those charges that are paid by the feepayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement pursuant to this section shall file a claim with the board that shall be in the form as may be prescribed by the board. The board shall not grant a claim unless it determines that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold resulted from board error.

(2) Prior to the levy or notice to withhold, the feepayer responded to all contacts by the board and provided the board with any requested information or documentation that was sufficient to establish the feepayer's position. The requirement of this paragraph may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold that is asserted to be erroneous. The board shall respond to a claim filed pursuant to this section within 30 days of receipt. If the board denies a claim, the taxpayer shall be notified in writing of the reason or reasons for denial.

SEC. 50. Section 50140 of the Revenue and Taxation Code is amended to read:

50140. (a) Except as provided in subdivision (b), the board shall not approve a refund three years after the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 50113) of Chapter 3, after six months from the date the determinations have become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. The board shall not approve a credit after the expiration of that period, unless a claim for credit is filed with the board within that period.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 50113.2 if a claim is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

SEC. 51. Section 50156.14 of the Revenue and Taxation Code is amended to read:

50156.14. (a) A feepayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid to the feepayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the feepayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the feepayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the feepayer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 52. Section 55053 is added to the Revenue and Taxation Code, to read:

55053. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 53. Section 55222 of the Revenue and Taxation Code is amended to read:

55222. (a) Except as provided in subdivision (b), no refund shall be approved by the board after three years from the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 55061) of Chapter 3, after six months from the date the determinations have become final, or six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given pursuant to Section 55064.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 55064 if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

SEC. 54. Section 55335 of the Revenue and Taxation Code is amended to read:

55335. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date

the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 55. Section 60633.1 of the Revenue and Taxation Code is amended to read:

60633.1. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 56. Any section of any act enacted by the Legislature during the 2001 calendar year, other than SB 662 (relating to maintenance of the codes), that does both of the following shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act:

(a) Takes effect on or before January 1, 2002.

(b) Amends, amends and renumbers, adds, repeals, and adds, or repeals a section that is amended by this act.

CHAPTER 544

An act to amend Section 290 of, and to add Section 290.01 to, the Penal Code, relating to sex offenders.

[Approved by Governor October 5, 2001. Filed with
Secretary of State October 7, 2001.]

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

SECTION 1. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, and place of employment including the name and address of the employer, on a form as may be required by the Department of Justice.

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his

or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms ''employed or carries on a vocation'' includes employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date

has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for

consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall

require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under

this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is

required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the

registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is

required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five

working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

(O) The offender's enrollment, employment, or vocational status with any university, college, community college, or other institution of higher learning.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, ''likely to encounter'' means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, ''reasonably suspects'' means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, ''at risk'' means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of

the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) ''Confinement'' means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) ''Designated law enforcement entity'' means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California, California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary

to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, ''law enforcement agency'' means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and

consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.1. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the

annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms ''employed or carries on a vocation'' includes employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person

is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted

commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person taken by the registering official.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice

shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted

probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement

agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

(O) The offender's enrollment, employment, or vocational status with any university, college, community college, or other institution of higher learning.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, ''likely to encounter'' means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, ''reasonably suspects'' means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position,

drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, ''at risk'' means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is

of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) ''Confinement'' means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) ''Designated law enforcement entity'' means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of

the University of California, California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, ''law

enforcement agency'' means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.2. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of

the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, and place of employment including the name and address of the employer, on a form as may be required by the Department of Justice.

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25,

2000. The terms ''employed or carries on a vocation'' includes employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person

committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation

department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to

paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a

misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the

person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision that, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons,

agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

(O) The offender's enrollment, employment, or vocational status with any university, college, community college, or other institution of higher learning.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, ''likely to encounter'' means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, ''reasonably suspects'' means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, ''at risk'' means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) ''Confinement'' means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under

Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) ''Designated law enforcement entity'' means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California, California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, ''law enforcement agency'' means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.3. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an

unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar

year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms ''employed or carries on a vocation'' includes employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is

required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that

he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement

agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The

preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person taken by the registration official.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision that, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice

shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

(O) The offender's enrollment, employment, or vocational status with any university, college, community college, or other institution of higher learning.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, ''likely to encounter'' means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, ''reasonably suspects'' means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, ''at risk'' means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than

five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) ''Confinement'' means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) ''Designated law enforcement entity'' means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California, California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children;

dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, ''law enforcement agency'' means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard

to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 2. Section 290.01 is added to the Penal Code, to read:

290.01. (a) Commencing October 28, 2002, every person required to register under Section 290 who is enrolled as a student of any university, college, community college, or other institution of higher learning, or is, with or without compensation, a full-time or part-time employee of that university, college, community college, or other institution of higher learning, or is carrying on a vocation at the university, college, community college, or other institution of higher learning, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall, in addition to the registration required by Section 290, register with the campus police department within five working days of commencing enrollment or employment at that university, college, community college, or other institution of higher learning, on a form as may be required by the Department of Justice. The terms ''employed or carries on a vocation'' include employment whether or not financially compensated, volunteered, or performed for government or educational benefit. The registrant shall also notify the campus police department within five working days of ceasing to be enrolled or employed, or ceasing to carry on a vocation, at the university, college, community college, or other institution of higher learning.

(b) If the university, college, community college, or other institution of higher learning has no campus police department, the registrant shall instead register pursuant to subdivision (a) with the police of the city in which the campus is located or the sheriff of the county where the campus is located if the campus is located in an unincorporated area or in a city that has no police department, on a form as may be required by the Department of Justice. The requirements of subdivisions (a) and (b) are in addition to the requirements of Section 290.

(c) A first violation of this section is a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000). A second violation of this section is a misdemeanor punishable by imprisonment in a county jail for not more than six months, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine. A third or subsequent violation of this section is a misdemeanor punishable by imprisonment in a county jail for not more than one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 3. (a) Section 1.1 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 349. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 290

of the Penal Code, and (3) AB 1004 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 349, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 1004. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 290 of the Penal Code, (3) AB 349 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1004 in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 349, and AB 1004. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2002, (2) all three bills amend Section 290 of the Penal Code, and (3) this bill is enacted after AB 349 and AB 1004, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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.

CHAPTER 545

An act to amend Sections 8482.8 and 8483.7 of, to amend the heading of Article 22.5 (commencing with Section 8482) of Chapter 2 of Part 6 of, to add Sections 8483.1, 8483.2, 8483.5, and 8483.75 to, and to repeal and amend Sections 8482, 8482.3, 8482.6, 8483, 8483.4, 8483.8, 8484, and 8484.3 of, the Education Code, relating to before and after instructional day school programs.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. This act shall be known, and may be cited, as the Before and After School Learning and Safe Neighborhoods Partnerships Program Act.

SEC. 2. The heading for Article 22.5 (commencing with Section 8482) of Chapter 2 of Part 6 of the Education Code is amended to read:

Article 22.5. Before and After School Learning and Safe Neighborhoods Partnerships Program

SEC. 3. Section 8482 of the Education Code, as added by Chapter 318 of the Statutes of 1998, is repealed.

SEC. 4. Section 8482 of the Education Code, as added by Chapter 319 of the Statutes of 1998, is repealed.

SEC. 5. Section 8482 of the Education Code, as added by Chapter 320 of the Statutes of 1998, is amended to read:

8482. There is hereby established the Before and After School Learning and Safe Neighborhoods Partnerships Program. The purpose of this program is to create incentives for establishing locally driven before and after school enrichment programs that partner schools and communities to provide academic and literacy support and safe, constructive alternatives for youth.

SEC. 6. Section 8482.3 of the Education Code, as added by Chapter 318 of the Statutes of 1998, is repealed.

SEC. 7. Section 8482.3 of the Education Code, as added by Chapter 319 of the Statutes of 1998, is repealed.

SEC. 8. Section 8482.3 of the Education Code, as amended by Chapter 78 of the Statutes of 1999, is amended to read:

8482.3. (a) The Before and After School Learning and Safe Neighborhoods Partnerships Program shall be established to serve pupils in kindergarten and grades 1 to 9, inclusive, at participating elementary, middle, junior high, and charter schoolsites.

(b) A program may operate a before school component of a program, an after school component, or both the before and after school components of a program, on one or multiple schoolsites. If a program operates at multiple schoolsites, only one application shall be required for its establishment.

(c) Each component of a program established pursuant to this article shall consist of the following two components:

(1) An educational and literacy component whereby tutoring or homework assistance is provided in one or more of the following areas: language arts, mathematics, history and social science, or science.

(2) A component whereby educational enrichment, which may include, but need not be limited to, recreation and prevention activities, is provided.

(d) Applicants for programs established pursuant to this article may include any of the following:

(1) A local education agency, including a charter school.

(2) A city, county, or nonprofit organization in partnership with, and with the approval of, a local education agency or agencies.

(e) Applicants for grants pursuant to this article shall ensure that each of the following requirements is fulfilled, if applicable:

(1) The application documents the commitments of each partner to operate a program on that schoolsite or schoolsites.

(2) The application has been approved by the school district and the principal of each schoolsite.

(3) Each partner in the application agrees to share responsibility for the quality of the program.

(4) The application designates the public agency or local education agency partner to act as the fiscal agent. For purposes of this section, ''public agency'' means only a county board of supervisors or, where the city is incorporated or has a charter, a city council.

(5) Applicants agree to follow all fiscal reporting and auditing standards required by the State Department of Education.

SEC. 9. Section 8482.6 of the Education Code, as added by Chapter 318 of the Statutes of 1998, is repealed.

SEC. 10. Section 8482.6 of the Education Code, as added by Chapter 319 of the Statutes of 1998, is repealed.

SEC. 11. Section 8482.6 of the Education Code, as added by Chapter 320 of the Statutes of 1998, is amended to read:

8482.6. Every pupil attending a school operating a program pursuant to this article is eligible to participate in the program, subject to program capacity. A program established pursuant to this article is not required to charge family fees or conduct individual eligibility determination based on need or income.

SEC. 12. Section 8482.8 of the Education Code is amended to read:

8482.8. (a) If there is a significant barrier to pupil participation in a program established pursuant to this article at the school of attendance for either the before school or the after school component, an applicant may request approval from the Superintendent of Public Instruction, prior to or during the grant application process, to provide services at another schoolsite for that component. An applicant that requests approval shall address the manner in which the applicant intends to provide safe, supervised transportation between schoolsites; ensure communication among teachers in the regular school program, staff in the before school and after school components of the program, and parents of pupils; and align the educational and literacy component of the before and after school components of the program with participating pupils' regular school programs.

(b) For purposes of this article, a significant barrier to pupil participation in the before or after school component of a program established pursuant to this chapter means either of the following:

(1) Fewer than 20 pupils participating in the component of the program.

(2) Extreme transportation constraints, including, but not limited to, desegregation bussing, bussing for magnet or open enrollment schools, or pupil dependence on public transportation.

SEC. 13. Section 8483 of the Education Code, as added by Chapter 318 of the Statutes of 1998, is repealed.

SEC. 14. Section 8483 of the Education Code, as added by Chapter 319 of the Statutes of 1998, is repealed.

SEC. 15. Section 8483 of the Education Code, as amended by Chapter 872 of the Statutes of 1999, is amended to read:

8483. (a) (1) Every after school component of a program established pursuant to this article shall operate a minimum of three hours a day and shall operate at least until 6 p.m. on every regular schoolday. Every after school component of the program shall establish a policy regarding reasonable early daily release of pupils from the program.

(2) It is the intent of the Legislature that elementary school pupils participate in the full day of the program every day during which pupils participate and that pupils in middle school or junior high school attend a minimum of nine hours a week and three days a week to accomplish program goals, except when released early in accordance with the early release policy described in paragraph (1) or as reasonably necessary.

(3) In order to develop an age appropriate after school program for pupils in middle school or junior high school, programs established pursuant to this article may implement a flexible attendance schedule for those pupils. Priority for enrollment of pupils in middle school or junior high school shall be given to pupils who attend daily.

(b) The administrators of a program established pursuant to this article shall have the option of operating during any combination of summer, intersession, or vacation periods for a minimum of three hours per day at the approved rate for the regular school year pursuant to Section 8483.7.

SEC. 16. Section 8483.1 is added to the Education Code, to read:

8483.1. (a) (1) Every before school program component established pursuant to this article shall commence operation at or before 6 a.m. on every regular schoolday or two hours before the commencement of the regular schoolday. A program may operate less than two hours per regular schoolday, but in no instance shall a program operate for less than one and one-half hours per regular schoolday. Every program shall establish a policy regarding reasonable late daily arrival of pupils to the program.

(2) It is the intent of the Legislature that elementary school pupils participate in the full day of the program every day during which pupils

participate and that pupils in middle school or junior high school attend a minimum of six hours a week and three days a week to accomplish program goals, except when arriving late in accordance with the late arrival policy described in paragraph (1) or as reasonably necessary. In no event shall a pupil participate less than one and one-half hours per day to be eligible for funding.

(3) In order to develop an age appropriate before school program for pupils in middle school or junior high school, programs established pursuant to this article may implement a flexible attendance schedule for those pupils. Priority for enrollment of pupils in middle school or junior high school shall be given to pupils who attend daily.

(b) The administrators of a before school program established pursuant to this article shall have the option of operating during any combination of summer, intersession, or vacation periods for a minimum of two hours per day at the approved rate for the regular school year pursuant to Section 8483.75.

SEC. 17. Section 8483.2 is added to the Education Code, to read:

8483.2. Notwithstanding any other provision of this article, any program electing to operate both a before and after school component for the same pupils during summer, intersession, or vacation periods must operate these programs a minimum of five hours per day to receive the approved rates for the regular school year pursuant to both Sections 8483.7 and 8483.75.

SEC. 18. Section 8483.4 of the Education Code, as added by Chapter 318 of the Statutes of 1998, is repealed.

SEC. 19. Section 8483.4 of the Education Code, as added by Chapter 319 of the Statutes of 1998, is repealed.

SEC. 20. Section 8483.4 of the Education Code, as added by Chapter 320 of the Statutes of 1998, is amended to read:

8483.4. The administrator of every program established pursuant to this article shall establish minimum qualifications for each staff position that, at a minimum, ensure that all staff members who directly supervise pupils meet the minimum qualifications for an instructional aide, pursuant to the policies of the school district. Selection of the program site supervisors shall be subject to the approval of the schoolsite principal. The administrator shall also ensure that the program maintains a pupil-to-staff member ratio of no more than 20 to 1. All program staff and volunteers shall be subject to the health screening and fingerprint clearance requirements in current law and district policy for school personnel and volunteers in the school district.

SEC. 21. Section 8483.5 is added to the Education Code, to read:

8483.5. It is the intent of the Legislature that a minimum of eighty-five million dollars ($85,000,000) be appropriated for the program established pursuant to this article, through the annual Budget

Act. Of the funds appropriated for the program, current grant recipients have priority for receiving continued funding for the same purposes for which they previously received an award.

SEC. 22. Section 8483.7 of the Education Code is amended to read:

8483.7. (a) (1) (A) Every school that establishes a program pursuant to this article is eligible to receive a three-year renewable incentive grant, that shall be awarded in three one-year increments and is subject to annual reporting and recertification as required by the State Department of Education, for either of the following, as selected by the school:

(i) Up to five dollars ($5) per day per pupil, if the program serves pupils in elementary, middle, or junior high school.

(ii) Five dollars ($5) per pupil for each three hours of pupil attendance, with a maximum total reimbursement of twenty-five dollars ($25) per pupil per week, if the program serves pupils in middle or junior high school. To receive reimbursement pursuant to this subparagraph, the program administrator shall apply to and receive approval annually from the Superintendent of Public Instruction. Approval by the Superintendent of Public Instruction shall be based on program results.

(B) The maximum total grant amount awarded annually pursuant to this paragraph shall be seventy-five thousand dollars ($75,000) for each regular school year for each elementary school and one hundred thousand dollars ($100,000) for each regular school year for each middle or junior high school.

(2) For large schools, the maximum total grant amounts described in paragraph (1) may be increased based on the following formulas, up to a maximum amount of twice the respective limits specified in paragraph (1):

(A) For elementary schools, multiply seventy-five dollars ($75) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 600.

(B) For middle schools, multiply seventy-five dollars ($75) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 900.

(3) The maximum total grant amounts set forth in subparagraph (B) of paragraph (1) and in paragraph (2) may be increased from any funds made available for this purpose in the annual Budget Act for participating schools that have pupils on waiting lists for the program. Grants may be increased by the lesser of an amount that is either 25 percent of the current maximum total grant amount or equal to the proportion of pupils unserved by the program as measured by documented waiting lists as of January 1, 2001, compared to the actual after school enrollment on the same date. Matching fund requirements shall be increased accordingly.

(4) A school that establishes a program pursuant to this article is eligible to receive a supplemental grant to operate the program during any combination of summer, intersession, or vacation periods for a maximum of the lesser of the following amounts:

(A) Five dollars ($5) per day per pupil.

(B) Thirty percent of the total grant amount awarded to the school per school year pursuant to this subdivision.

(5) Each program shall provide at least 50 percent cash or in-kind local matching funds from the school district, governmental agencies, community organizations, or the private sector for each dollar received in grant funds. Neither facilities nor space usage may fulfill the match requirement.

(b) The administrator of a program established pursuant to this article may supplement, but not supplant existing funding for after school programs with grant funds awarded pursuant to this article. State categorical funds for remedial education activities shall not be eligible as matching funds for those after school programs.

(c) Up to 15 percent of the initial year's grant amount for each grant recipient may be utilized for startup costs. Under no circumstance shall funding for startup costs result in an increase in the grant recipient's total funding above the approved grant amount.

SEC. 23. Section 8483.75 is added to the Education Code, to read:

8483.75. (a) (1) (A) Every school that establishes a before school program component pursuant to Section 8483.1 of this article is eligible to receive a three year renewable incentive grant, that shall be awarded in three one-year increments and is subject to annual reporting and recertification as required by the State Department of Education, for either of the following, as selected by the school:

(i) Up to three dollars and thirty-three cents ($3.33) per day per pupil for a two hour program, if the program serves pupils in elementary, middle, or junior high school. Per pupil reimbursement rates shall be reduced on a prorated basis for those programs which operate for less than two hours per regular schoolday. The rate shall be determined by multiplying 3.33 by the fraction represented by dividing the minutes of operation per day by 120.

(ii) Three dollars and thirty-three cents ($3.33) per pupil for each two hours of pupil attendance, with a maximum total reimbursement of sixteen dollars and sixty-five cents ($16.65) per pupil per week, if the program serves pupils in middle or junior high school. To receive reimbursement pursuant to this subparagraph, the program administrator shall apply to and receive approval annually from the Superintendent of Public Instruction. Approval by the Superintendent of Public Instruction shall be based on program results.

(B) The maximum total grant amount awarded annually pursuant to this paragraph shall be twenty-five thousand dollars ($25,000) for each regular school year for each elementary school and thirty-three thousand dollars ($33,000) for each regular school year for each middle or junior high school.

(2) For large schools, the maximum total grant amounts described in paragraph (1) may be increased based on the following formulas, up to a maximum amount of twice the respective limits specified in paragraph (1):

(A) For elementary schools, multiply fifty dollars ($50) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 600.

(B) For middle schools, multiply fifty dollars ($50) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 900.

(3) A school that establishes a program pursuant to this article is eligible to receive a supplemental grant to operate the program during any combination of summer, intersession, or vacation periods for a maximum of the lesser of the following amounts:

(A) Three dollars and thirty-three cents ($3.33) per day per pupil.

(B) Thirty percent of the total grant amount awarded to the school per school year pursuant to this subdivision.

(4) Each program shall provide at least 50 percent cash or in-kind local matching funds from the school district, governmental agencies, community organizations, or the private sector for each dollar received in grant funds. Neither facilities nor space usage may fulfill the match requirement.

(b) The administrator of a program established pursuant to this article may supplement, but not supplant existing funding for before school programs with grant funds awarded pursuant to this article. State categorical funds for remedial education activities shall not be eligible as matching funds for those before school programs.

(c) Up to 15 percent of the initial year's grant amount for each grant recipient may be utilized for startup costs. Under no circumstance shall funding for startup costs result in an increase in the grant recipient's total funding above the approved grant amount.

SEC. 24. Section 8483.8 of the Education Code, as added by Chapter 318 of the Statutes of 1998, is repealed.

SEC. 25. Section 8483.8 of the Education Code, as added by Chapter 319 of the Statutes of 1998, is repealed.

SEC. 26. Section 8483.8 of the Education Code, as added by Chapter 320 of the Statutes of 1998, is amended to read:

8483.8. In any fiscal year, if a program participant receives state funds to operate a program pursuant to this article that are in an amount

in excess of the amount warranted, due to the program serving fewer pupils than planned, to raising an inadequate amount of matching funds, or for any other reason, the State Department of Education shall reduce any subsequent allocations by an amount equal to that overpayment. If the program participant discontinues participation in the program and no allocations are made after the determination that an overpayment has been made, the State Department of Education shall take the following action:

(a) In the case of local education agencies, the State Department of Education shall bill the agencies for the amount of the overpayment. If payment is not received within three months of the billing invoice date, an amount equal to the amount of the overpayment shall be withheld from the next principal apportionment to the agency.

(b) In the case of entities other than local education agencies, the State Department of Education shall bill the entities for the amount of the overpayment, and pursue appropriate legal remedies if not paid.

SEC. 27. Section 8484 of the Education Code, as added by Chapter 318 of the Statutes of 1998, is repealed.

SEC. 28. Section 8484 of the Education Code, as added by Chapter 319 of the Statutes of 1998, is repealed.

SEC. 29. Section 8484 of the Education Code, as added by Chapter 320 of the Statutes of 1998, is amended to read:

8484. As required by the State Department of Education, programs established pursuant to this article shall submit annual outcome based data for evaluation, including measures for academic performance, attendance, and positive behavioral changes. The State Department of Education may consider these outcomes when determining eligibility for grant renewal.

SEC. 30. Section 8484.3 of the Education Code, as added by Chapter 318 of the Statutes of 1998, is repealed.

SEC. 31. Section 8484.3 of the Education Code, as added by Chapter 319 of the Statutes of 1998, is repealed.

SEC. 32. Section 8484.3 of the Education Code, as added by Chapter 320 of the Statutes of 1998, is amended to read:

8484.3. (a) Programs established pursuant to this article shall not be required to comply with the requirements of other provisions of this chapter or requirements set forth in Chapter 19 of Division 1 of Title 5 of the California Code of Regulations.

(b) Notwithstanding any other provision of law or regulation, a program operated by a city, county, or nonprofit organization pursuant to this article may operate for up to 30 hours per week without obtaining a license or special permit under Chapter 3.4 (commencing with Section

1596.70) or Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code.

CHAPTER 546

An act to amend Section 52262 of the Education Code, relating to education technology.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 52262 of the Education Code is amended to read:

52262. (a) Commencing in the second fiscal year following the year in which a high school receives a technology installation grant, and upon certification of completion of the installation project, the superintendent shall allocate to each high school an annual technology support and staff training grant. This grant shall provide up to forty-five dollars ($45) per pupil enrolled, in grades 9 to 12, inclusive, as of the October census in each fiscal year. However, no school shall receive more total funding than is matched locally, except when the match requirement has been modified or waived pursuant to Section 52254. Funding for the purposes of this section shall be contingent on an appropriation made in the annual Budget Act or an appropriation contained in another measure, and, if funds are insufficient to provide full funding, shall be proportionately reduced.

(b) (1) A high school established after October 6, 2000, that would have been eligible for the program established pursuant to this chapter except that it was established after October 6, 2000, may receive a technology support and staff training grant pursuant to subdivision (a).

(2) Before receiving funding under this subdivision, a high school shall provide one of the following technology plans to the Superintendent of Public Instruction.

(A) A digital high school site technology plan that complies with the requirements of Section 52256.

(B) A school district technology plan that is developed pursuant to Section 51871.5 and meets the planning guidelines established in the document ''Education Technology Planning: A Guide for School Districts,'' approved by the State Board of Education in January 2001, or any successor document approved by the State Board of Education.

(C) A district or school technology plan that complies with the requirements of the federal E-rate program.

(3) The Superintendent of Public Instruction may review plans submitted pursuant to paragraph (2), recommend modifications, and withhold funding until a satisfactory plan is submitted.

(c) Grant funds and matching funds shall be spent to maintain and upgrade systems, to support pupil and faculty use of education technology, and to provide ongoing staff training in education technology.

CHAPTER 547

An act to add Section 25221 to the Corporations Code, relating to securities.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 25221 is added to the Corporations Code, to read:

25221. (a) Notwithstanding any other provision of law, a broker-dealer, or any affiliate thereof, licensed under this chapter, or any officer or employee thereof, may submit to the Department of Justice fingerprints of an applicant for employment for the purpose of obtaining information as to the existence and nature of a record of a conviction and of an arrest for which the Department of Justice establishes that the applicant was released on bail or on his or her own recognizance pending trial. Fingerprints taken pursuant to this section include fingerprints taken by the use of fingerprint live-scan technology, as described in Section 1596.871 of the Health and Safety Code.

(b) The Department of Justice shall provide the following information to the broker-dealer, affiliate, or officer or employee thereof pursuant to subdivision (a):

(1) Every conviction rendered against the applicant.

(2) Every arrest for which the Department of Justice establishes that the applicant was released on bail or on his or her own recognizance pending trial.

CHAPTER 548

An act to amend Sections 25264, 25395.20, 25395.21, 25395.22, 25395.25, 25395.26, and 25395.29 of, to add Section 25395.28 to, and to repeal and add Section 25395.27 of, the Health and Safety Code, relating to hazardous materials, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 25264 of the Health and Safety Code is amended to read:

25264. (a) The administering agency for a hazardous materials release site shall supervise all aspects of a site investigation and remedial action conducted by the responsible party and, for that purpose, the administering agency shall, notwithstanding any other provision of law, including, but not limited to, this division and Division 7 (commencing with Section 13000) of the Water Code, have sole jurisdiction over all activities that may be required to carry out a site investigation and remedial action necessary to respond to the hazardous materials release at the site. For purposes of this chapter, the administering agency shall do all of the following:

(1) Administer all state and local laws, ordinances, regulations, and standards that are applicable to, and govern, the activities involved with the site investigation and remedial action at the site.

(2) Determine the adequacy of site investigation and remedial action activities at the site and the extent to which the activities comply, or fail to comply, with applicable state and local laws, ordinances, regulations, and standards. In making these determinations, the administering agency shall consult with the advisory team if one has been convened pursuant to Section 25263.

(3) Issue permits or other forms of authorization that may be required by state and local laws, ordinances, and regulations and that are necessary to undertake activities related to the site investigation and remedial action at the site. Before issuing a permit or other authorization pursuant to this paragraph, the administering agency shall consult with the appropriate agency and ensure that required procedures are followed and adequate permit requirements and conditions are imposed.

(b) Upon determining that a site investigation and remedial action at a hazardous materials release site has been satisfactorily completed and that a permanent remedy to the release has been accomplished, the administering agency shall issue the responsible party a certificate of

completion. The certificate shall describe the release of hazardous materials that was the subject of the remedial action and the remedial action that was taken and shall certify that applicable remedial action standards and objectives were achieved.

(c) Except as otherwise provided in Section 25265 and this subdivision, the issuance of a certificate of completion by the administering agency shall constitute a determination that the responsible party has complied with the requirements of all state and local laws, ordinances, regulations, and standards that are applicable to the site investigation and remedial action for which the certificate is issued.

Except as provided in Section 25265, no agency, other than the administering agency, that has jurisdiction over hazardous materials releases pursuant to those state and local laws, ordinances, or regulations may take action against the responsible party with respect to the hazardous materials release that was the subject of the site investigation and remedial action for which a certificate of completion is issued and the administering agency may take action against the responsible party with respect to the hazardous materials release that was the subject of the site investigation and remedial action for which a certificate of completion is issued only if the administering agency determines that one or more of the following applies:

(1) Monitoring, testing, or analysis of the hazardous materials release site subsequent to the issuance of the certificate of completion indicates that the remedial action standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the site as part of the remedial action or certificate of completion are violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action or certificate of completion for the site are not adequately funded or are not properly carried out.

(4) A hazardous materials release is discovered at the site that was not the subject of the site investigation and remedial action for which the certificate of completion was issued.

(5) A material change in the facts known to the administering agency at the time the certificate of completion was issued, or new facts, causes the administering agency to find that further site investigation and remedial action are required in order to prevent a significant risk to human health and safety or to the environment.

(6) The responsible party induced the administering agency to issue the certificate of completion by fraud, negligent or intentional nondisclosure of information, or misrepresentation.

(d) (1) Except as provided in Section 25265, the administering agency shall be the sole agency responsible for determining if any of the conditions described in paragraphs (1) to (6), inclusive, of subdivision (c) are applicable to a hazardous materials release site for which a certificate of completion has been issued pursuant to subdivision (b), and for taking any action that is deemed necessary if that determination is made. Any agency, other than the administering agency, that has information that any of those conditions applies to the hazardous materials site shall provide the administering agency with that information and the administering agency shall, within 45 calendar days of receipt of the request, do all of the following:

(A) Determine whether the condition is applicable.

(B) If it is applicable, determine if further action at the site is warranted.

(C) If further action is warranted, take further action at the site as may be necessary.

(2) If the administering agency fails, or refuses, to act properly or in a timely manner, as required by this subdivision, the agency that provided the information to the administering agency may petition the committee for review in accordance with Section 25265. The decision of the committee shall be final, and shall not be subject to judicial review.

SEC. 2. Section 25395.20 of the Health and Safety Code is amended to read:

25395.20. (a) For purposes of this article, the following definitions shall apply:

(1) ''Account'' means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to subdivision (b).

(2) (A) ''Brownfield'' means property that meets all of the following conditions:

(i) It is located in an urban area.

(ii) It was previously the site of an economic activity that is no longer in operation at that location.

(iii) It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of application for a loan pursuant to this article.

(B) ''Brownfield'' does not include any of the following:

(i) Property listed, or proposed for listing, on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility.

(3) ''Cleanup and abatement order'' means an order issued by a regional board pursuant to Section 13304 of the Water Code.

(4) ''Cleanup Loans and Environmental Assistance to Neighborhoods Program'' or ''CLEAN'' means the loan program established by the department pursuant to Section 25395.22, to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property.

(5) ''Economic activity'' means a governmental activity, a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern.

(6) ''Eligible property'' means a site that is either of the following:

(A) A brownfield.

(B) An underutilized property that is any of the following:

(i) A property described in clause (v) of subparagraph (D) of paragraph (14).

(ii) A property located in an enterprise zone established pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to Article 4 (commencing with Section 33300) of Chapter 4 of Part 1 of Division 24, or in an eligible area, as determined by the Trade and Commerce Agency pursuant to paragraph (2) of subdivision (c) of Section 7072 of the Government Code.

(iii) A property, the redevelopment of which will result in any of the following:

(I) An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the economic activity located on the property before redevelopment occurred.

(II) An increase in property taxes paid to the local government that is at least 100 percent greater than the property taxes paid by the property owner before redevelopment occurred.

(III) Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the property after the redevelopment occurs.

(IV) Housing that is affordable to very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(V) The construction of new or expanded school facilities, public day care centers, parks, or community recreational facilities.

(C) ''Eligible property'' does not include any of the following:

(i) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility.

(7) (A) ''Hazardous material'' means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. ''Hazardous material'' includes, but is not limited to, all of the following:

(i) A hazardous substance, as defined in Section 25281 or 25316, including the substances specified in Section 25317.

(ii) A hazardous waste, as defined in Section 25117.

(iii) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

(B) ''Hazardous material'' does not include undisturbed naturally occurring hazardous material unless it will adversely affect the reasonable use of a property after response action is completed.

(8) ''Implementation costs,'' for purposes of the expenditure of any funds pursuant to this article, includes, but is not limited to, the costs of overseeing and reviewing preliminary endangerment assessments and response actions that are financed by a loan issued pursuant to this article, including oversight conducted by a regional board or state board pursuant to Section 25395.28.

(9) ''Investigating site contamination program'' means the loan program established by the department pursuant to Section 25395.21 to conduct a preliminary endangerment assessment of a brownfield or an underutilized urban property.

(10) ''Leaking underground fuel tank'' has the same meaning as ''tank,'' as defined in Section 25299.24.

(11) ''No longer in operation'' means an economic activity that is, or previously was, located on a property that is not conducting operations on the property of the type usually associated with the economic activity.

(12) ''Project'' means any response action, and the planned future development, included in an application for a loan pursuant to Section 25395.22.

(13) ''Property'' means real property, as defined in Section 658 of the Civil Code.

(14) ''Underutilized property'' means property that meets all of the following conditions:

(A) It is located in an urban area.

(B) An economic activity is conducted on the property.

(C) It is the subject of a proposal for development pursuant to this article.

(D) One of the following applies:

(i) The economic activity on the property is irregular or intermittent in nature and uses the property for productive purposes less than four months in any calendar year.

(ii) The economic activity on the property employs less than 25 percent of the property for productive purposes.

(iii) The structures, infrastructure, and other facilities on the property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal.

(iv) The economic activity conducted on the property is a parking facility or an activity that offers a similar marginal economic service and the facility or activity will be replaced when the property is redeveloped.

(v) The property is adjacent to one or more brownfields that are the subject of a project under this article and its inclusion in the project is necessary in order to ensure that the redevelopment of the brownfield or brownfields occurs.

(E) An underutilized property does not include any of the following:

(i) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility.

(15) ''Regional board'' means a California regional water quality control board.

(16) ''State board'' means the State Water Resources Control Board.

(17) ''Urban area'' means either of the following:

(A) A central city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile.

(B) An urbanized area, as defined in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code.

(b) The Cleanup Loans and Environmental Assistance to Neighborhoods Account is hereby established in the General Fund to provide low-interest loans to qualified applicants for the purpose of funding preliminary endangerment assessments and response actions at brownfields and underutilized properties located in the state pursuant to this article. All of the following moneys shall be deposited in the account:

(1) Funds appropriated by the Legislature for the purposes of this article.

(2) Notwithstanding Section 16475 of the Government Code, any interest earned upon money deposited into the account.

(3) Proceeds from loan repayments.

(4) Proceeds from the sale of property pursuant to this article that is the subject of foreclosure or its equivalent, as defined in subdivision (f) of Section 25548.1, and proceeds from the enforcement of any other security interest.

(c) (1) Except as provided in paragraph (2), notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated without regard to fiscal years to the department for the purpose of providing loans pursuant to Sections 25395.21 and 25395.22.

(2) The money in the account may be expended by the department, a regional board, the state board, and the agency for the implementation and administration of this article only upon appropriation by the Legislature in the annual Budget Act or in another measure.

SEC. 3. Section 25395.21 of the Health and Safety Code is amended to read:

25395.21. (a) The department, with the approval of the secretary, shall establish an Investigating Site Contamination Program to provide loans to eligible persons to conduct preliminary endangerment assessments of brownfields and underutilized properties. A loan provided pursuant to this section shall not be used for the cost of a phase I environmental assessment or the department's oversight of the preparation and approval of the preliminary endangerment assessment.

(b) The department shall develop a loan application form for an investigating site contamination program loan and shall include, in the form, any provisions that the department considers to be appropriate. The application form shall be signed by the loan applicant and shall be submitted to the department with all of the following documentation:

(1) The phase I environmental assessment for the property that is the subject of the loan application.

(2) Information that demonstrates that the property is a brownfield or an underutilized property.

(3) If the owner of the property that is the subject of the loan application is not the loan applicant, one of the following:

(A) Documentation that demonstrates that the owner consents to the performance of the preliminary endangerment assessment of the property.

(B) A copy of an agreement between the property owner and the loan applicant that gives the loan applicant an option to purchase the property.

(C) If the loan applicant is a local government entity, or a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, a demonstration to the department that the local government entity, or developer or prospective purchaser acting together with the local government entity pursuant to an enforceable agreement, has legal access to perform the preliminary

endangerment assessment at the property, or will have legal access, prior to receiving loan funds.

(4) Any other information the department deems necessary.

(c) The department shall determine whether to approve a loan application pursuant to this section based upon the information submitted pursuant to subdivision (b). In making a decision regarding whether to approve a loan application, the department shall approve a loan pursuant to this section for a property only if the department determines the property is a brownfield or an underutilized property.

(d) The maximum amount of a loan granted pursuant to this section shall not exceed one hundred thousand dollars ($100,000).

(e) (1) Except as provided in paragraph (2) and in subdivision (f), upon approval of the loan application by the department, the loan recipient shall execute an agreement with the department to repay the loan over a period not to exceed three years.

(2) If the loan is to a local government entity, or to a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, the department may delay the beginning of the loan repayment period.

(3) Except as provided in paragraph (4), the agreement made pursuant to paragraph (1) shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the loan application, any money so recovered, except for reasonable costs and the fees incurred to recover that money, shall be used first to repay the loan or repay the grant.

(4) Notwithstanding paragraph (3), a loan recipient is not required to first use the money recovered to repay the loan or grant, if the recipient can demonstrate, to the satisfaction of the department, that the recovered money is necessary to, and is being applied to, the total environmental remediation of the property, and that the total of the recovered money and the loan amount does not exceed the cost of remediation.

(f) If a loan recipient who is not the owner of the property and the department determine, after the completion of the preliminary endangerment assessment, that the sum of the cost of remediation and the property purchase price makes the redevelopment of the property not economically feasible, the department may waive the repayment of up to 75 percent of the loan, and the amount waived shall be deemed a grant to the loan recipient. If the department waives the repayment of part of the loan, the recipient shall repay the remaining portion of the loan within one year of that waiver.

(g) Upon approval of a loan, the recipient shall enter into an agreement with the department for the department to provide regulatory oversight of the preparation and approval of the preliminary endangerment assessment.

(h) Notwithstanding any requirement of this division regarding cost recovery or reimbursement for oversight costs, a loan recipient is not liable for paying the department's cost associated with the oversight of the preparation and approval of the preliminary endangerment assessment if the department determines there are sufficient funds in the account to reimburse the department for that oversight. If the department determines that the account has insufficient funds to pay for the oversight costs associated with the oversight of the preparation and approval of the preliminary endangerment assessment, the loan recipient shall pay the department the amount of those costs.

SEC. 4. Section 25395.22 of the Health and Safety Code is amended to read:

25395.22. (a) The department, with the approval of the secretary, shall establish a Cleanup Loans and Environmental Assistance to Neighborhoods Program to provide loans to finance the performance of any action necessary to respond to the release or threatened release of hazardous material at an eligible property. A recipient of a loan to perform an action to respond to a release or threatened release of a hazardous material at an eligible property that is granted pursuant to this section may also use the loan funds to pay the premium for environmental insurance products to facilitate the development of the site, if the insurance company has an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger and is authorized to offer environmental insurance in California. The department shall take those necessary actions to promote the use of loans under the CLEAN program by local governments. A loan provided pursuant to this section shall not be used to pay for a phase I environmental assessment, a preliminary endangerment assessment, the department's oversight of actions necessary to respond to the release or threatened release of hazardous material at an eligible property, or any operation and maintenance activity at a site.

(b) The department shall develop an application form for a loan under the CLEAN program and shall include, in the form, any provisions that the department determines to be appropriate to carry out the CLEAN program. The application shall be signed by the loan applicant and shall be accompanied by all of the following:

(1) A preliminary endangerment assessment that has been approved by the department, or an environmental assessment with equivalent information, that discloses the presence of a release or threatened release of a hazardous material at the property at concentrations that may pose a risk to public health and safety and the environment.

(2) The name and address of the project coordinator for the site and the résumé of the coordinator that demonstrates that the coordinator

possesses the requisite qualifications to manage the response action at the site.

(3) Documentation that the property is an eligible property and, if the department has implemented the priority scoring system set forth in Section 25395.23, sufficient information to enable the department to determine the priority score for the property.

(4) Documentation that the planned future development of the site is consistent with the current and reasonably foreseeable future land uses of the property.

(5) If the owner of the eligible property that is the subject of the loan application is not the loan applicant, one of the following:

(A) Documentation that demonstrates that the owner agrees to use the property as a security interest for the loan to finance necessary response action at the property.

(B) A copy of an agreement between the property owner and the loan applicant that gives the loan applicant an option to purchase the property.

(C) If the loan applicant is a local government entity, or a developer or prospective purchaser acting in concert with a local government entity pursuant to an enforceable agreement, a demonstration to the department that the local government entity, or developer or prospective purchaser acting in concert with a local government entity pursuant to an enforceable agreement, has legal access to perform any action necessary to respond to the release or threatened release of hazardous material at an eligible property, or will have legal access, prior to receiving loan funds.

(6) Any other information the department deems necessary.

SEC. 5. Section 25395.25 of the Health and Safety Code is amended to read:

25395.25. Upon the approval of a loan pursuant to Section 25395.23, the loan recipient shall do both of the following:

(a) Enter into an agreement with the department to repay the loan over a period of not more than seven years. If the loan is to a local government entity, or to a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, the department may delay the beginning of the loan repayment period.

(1) The agreement shall include those terms and conditions that the department deems appropriate.

(2) (A) The agreement shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the response action pursuant to the agreement, the loan recipient shall use the recovered money, except for reasonable costs and the fees incurred to recover that money, first to satisfy the loan.

(B) Notwithstanding subparagraph (A), a loan recipient is not required to first use the money recovered to repay the loan or grant, if the recipient can demonstrate, to the satisfaction of the department, that the recovered money is necessary to, and is being applied to, the total environmental remediation of the property, and that the total of the recovered money and the loan amount does not exceed the cost of remediation.

(b) (1) Enter into an agreement with the department or with the regional board or state board pursuant to Section 25295.28 for the oversight and approval of the response action at the site. This agreement shall be provided to the department before the department may release any loan funds to the loan recipient. This agreement shall include any necessary conditions and assurances to ensure compliance with post-completion ongoing operation and maintenance activities, and any necessary institutional controls on future uses of the property.

(2) Notwithstanding any requirement of this division regarding cost recovery or reimbursement for oversight costs, a loan recipient is not liable for paying the department's costs pursuant to this article or the regional board's or state board's costs pursuant to Section 25395.28 associated with the oversight of the response action at the site subject to the agreement, if the department determines there are sufficient funds in the account to reimburse the department costs pursuant to this article or the regional board's or state board's costs pursuant to Section 25395.28 for that oversight. If the department determines that the account has insufficient funds to pay for the oversight costs associated with the oversight of the response action at the site subject to the agreement, the loan recipient shall pay the department's costs pursuant to this article or the regional board's or state board's costs pursuant to Section 25395.28 for the amount of those costs.

SEC. 6. Section 25395.26 of the Health and Safety Code is amended to read:

25395.26. (a) A loan approved pursuant to Section 25395.23 shall be secured by the property subject to the release or threatened release of the hazardous material on which the response action will be taken or by another form of security that the department determines will adequately protect the state's interest. The department shall obtain an appropriate security interest in the property or other alternative form of security approved by the department. The department may foreclose on property, or the alternative form of security approved by the department, that is subject to a security interest pursuant to this section. Any funds received through a foreclosure or through the enforcement of any other security interest pursuant to this article shall be deposited in the account.

(b) The state, the secretary, the department, and the account are not liable under any state or local statute, regulation, or ordinance because

the department holds the security interest identified in subdivision (a) or because the department acquired property through foreclosure or its equivalent in satisfaction of a loan issued pursuant to this article.

(c) Chapter 6.96 (commencing with Section 25548) does not apply to the state, the secretary, the department, the agency, or the account with regard to a loan secured pursuant to subdivision (a).

(d) (1) Notwithstanding any other provision of law, no approval or review shall be required from the Department of General Services to obtain any security interest or exercise any rights, including, but not limited to, foreclosure, under any security interest or other agreement made pursuant to this article.

(2) The acquisition of a property pursuant to this article through foreclosure or its equivalent is not subject to Article 2 (commencing with Section 14660) of Chapter 2 of Part 5.5 of Division 3 of Title 2 of the Government Code.

(3) The department shall promptly dispose of any property acquired through the exercise of any security interest pursuant to this article at the property's current market value and the disposal of this property is exempt from Section 11011.1 of the Government Code and Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) This article shall not be construed to limit, extend, or affect local land use and zoning authority.

SEC. 7. Section 25395.27 of the Health and Safety Code is repealed.

SEC. 8. Section 25395.27 is added to the Health and Safety Code, to read:

25395.27. (a) (1) Except as provided in subdivisions (a) and (b) of Section 25395.28, any response action carried out under this article shall be conducted in accordance with the requirements of this chapter and Chapter 6.65 (commencing with Section 25260). However, for purposes of Section 25262, the administering agency for any site that is the subject of a loan under this article shall either be the department pursuant to this article, or a regional board, the state board, or a local oversight program agency under contract with the state board pursuant to Section 25395.28, and a person shall not request that a different agency be designated as an administering agency for the site under Chapter 6.65 (commencing with Section 25260).

(2) For purposes of this section, the Site Designation Committee created by Section 25261 is not required to meet and formally designate the department, a regional board, the state board, or a local oversight program agency under contract with the state board, as specified in Section 25395.28, as the administering agency pursuant to Section 25262 for a site that is the subject of a loan under this article. Upon the

approval of a loan under Section 25395.23, the department shall notify the Site Designation Committee of the administering agency for the site.

(b) For sites that are the subject of a loan under this article, all references in this chapter to a hazardous substance shall be deemed to be a reference to a hazardous material.

(c) Except as provided in subdivisions (a) and (b) of Section 25395.28, this chapter shall apply to a site that is the subject of a loan under this article, regardless of whether the site is on the list created pursuant to Section 25356.

(d) Except as provided in Section 25264, this article shall not be construed to limit the authority of the department, the regional board, or the state board to take any action otherwise authorized under any other provision of law.

(e) The department shall post, and update at least monthly, a list of loan applications received pursuant to this article on the department's Internet website. The list shall include the name of the applicant, the location of the property that is the subject of the loan application, the administering agency, and a contact at the department for further information. The department shall also annually post on that website a summary of the response action status for each site with a loan approved under Section 25395.23.

SEC. 9. Section 25395.28 is added to the Health and Safety Code, to read:

25395.28. (a) (1) Except as provided in paragraph (2) and subdivision (b), upon the request of a regional board or the state board, the administering agency for any site that is the subject of a loan approved under Section 25395.23 shall be a regional board, the state board, or a local oversight program agency under contract with the state board in accordance with Chapter 6.7 (commencing with Section 25280) and Chapter 6.75 (commencing with Section 25299.10), if the property is subject to a release from a leaking underground fuel tank and the release from the leaking underground fuel tank is the principal threat at that property, as determined by the regional board, the state board, and the department.

(2) If the site specified in paragraph (1) was not subject to oversight by a local oversight program agency prior to the date the loan application was submitted to the department pursuant to Section 25395.22, the regional board shall serve as the administering agency.

(3) Any response action for a property subject to this subdivision for a leaking underground fuel tank shall be carried out under Chapter 6.65 (commencing with Section 25260), Chapter 6.7 (commencing with Section 25280), and Chapter 6.75 (commencing with Section 25299.10).

(b) (1) Upon the request of a regional board, the regional board shall be the administering agency for a property specified in subdivision (a), if the site is subject to one or more of the following orders or agreements under Division 7 (commencing with Section 13000) of the Water Code prior to the date the loan application was submitted to the department pursuant to Section 25395.22:

(A) A cleanup and abatement order.

(B) Other cleanup order issued by a regional board.

(C) A written voluntary agreement with a regional board.

(2) Any response action for a site subject to this subdivision shall be carried out pursuant to Chapter 6.65 (commencing with Section 25260).

(c) Notwithstanding subdivisions (a) and (b), the regional board and the state board, in consultation with the department, may request the department to be the administering agency for a property subject to this section.

(d) Notwithstanding subdivision (b), if a regional board has issued a cleanup order or entered into a written voluntary agreement under Division 7 (commencing with Section 13000) of the Water Code for a site and the department has issued an order or entered into an enforceable agreement under Chapter 6.5 (commencing with Section 25100) or Chapter 6.8 (commencing with Section 25300), the regional board and the department shall consult and determine which agency shall be the administering agency for the site under this article.

(e) The department shall provide a written notice of the receipt of a loan application under Section 25395.22, including the name and address of the loan applicant and the location of the property, to both of the following:

(1) A regional board for any property within that regional board's jurisdiction.

(2) The state board for any property that contains a leaking underground fuel tank.

(f) The regional board or state board shall respond with a written notice to the department within 20 working days after receipt of the notice or information provided pursuant to subdivision (e) indicating whether the regional board or a local oversight program agency under contract with the state board will oversee the response action pursuant to this section. If the regional board or state board does not provide this notice within that time period, the regional board or state board shall be deemed to have elected not to oversee the response action.

(g) (1) If a regional board or a local oversight program agency under contract with the state board oversees a response action pursuant to this section, the department shall reimburse the regional board or state board from the account for oversight costs, if all of the following occur:

(A) The department determines, pursuant to paragraph (2) of subdivision (b) of Section 25395.25, that there are sufficient funds in the account.

(B) The department receives the report required upon completion of the response action under subdivision (i).

(C) The regional board or a local oversight program agency under contract with the state board, as appropriate, certifies that it is not eligible to be reimbursed for oversight costs from any other fund or account, including, but not limited to, the Underground Storage Tank Cleanup Fund pursuant to Chapter 6.75 (commencing with Section 25299.10).

(2) If the department determines pursuant to paragraph (2) of subdivision (b) of Section 25395.25 that the account has insufficient funds, the regional board or state board shall recover its oversight costs from the loan recipient, and the department shall not be liable for these oversight costs.

(h) If a regional board or a local oversight program agency under contract with the state board oversees a response action pursuant to this section, the recipient of a loan approved pursuant to Section 25395.23 shall enter into an agreement with the regional board or the state board under paragraph (1) of subdivision (b) of Section 25395.25 for the oversight and approval of the response action at the site, prior to the release of loan funds by the department. The agreement shall meet the requirements specified in the regulations adopted pursuant to Section 25395.29.

(i) If the regional board or a local oversight program agency under contract with the state board serves as the administering agency pursuant to this section, the regional board or the state board shall do both of the following:

(1) Annually provide information to the department about the status of the response action, including any response action decision document that includes limitations on land use or other institutional controls.

(2) Notify the department upon completion of the response action.

(j) This section does not apply to any site subject to Chapter 1 (commencing with Section 17210) of Part 10.5 of Division 1 of Title 1 of the Education Code.

SEC. 10. Section 25395.29 of the Health and Safety Code is amended to read:

25395.29. (a) The department may adopt regulations to implement this article as emergency regulations. The Office of Administrative Law shall consider those regulations to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code. Notwithstanding the 120-day limitation in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or

amended pursuant to this subdivision shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The department may adopt emergency regulations to implement the changes made by the act of the 2001–02 Regular Session of the Legislature that amends this section. Notwithstanding the 120-day limitation specified in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this subdivision shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Office of Administrative Law shall consider the regulations adopted pursuant to this subdivision, to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify and strengthen various provisions of the CLEAN loan program, which finances response actions for the cleanup of brownfield sites, thereby protecting public health and safety and the environment as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 549

An act to amend Sections 25395.20 and 25395.25 of, and to add Article 8.7 (commencing with Section 25395.40) to Chapter 6.8 of Division 20 of, the Health and Safety Code, relating to environmental protection, and making an appropriation therefor.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

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

(1) There are thousands of idle or underutilized urban properties in California where redevelopment has been stymied due to real or perceived hazardous materials contamination.

(2) Because of the reluctance of private developers, local governments, and schools to redevelop these properties, the location of new development tends to be at the edges of urban areas because those areas are generally perceived to entail lesser potential for contamination and liability for cleanup costs.

(3) This has resulted in a multitude of problems, including urban sprawl, decaying inner-city neighborhoods and schools, public health and environmental risks stemming from contaminated properties, reduced inner-city tax bases, and an increased need for major infrastructure improvements such as streets, highways, and sewer systems to service the urban fringe areas while the inner-city infrastructure deteriorates.

(4) Private investors and lending institutions hesitate to fund the redevelopment of underutilized urban properties because they are concerned over the potential legal liability associated with these sites as well as the potential for unexpected site cleanup costs. Environmental insurance has proven to be a valuable tool for private developers and lending institutions in reducing concerns over environmental liability and cleanup costs. However, environmental insurance may not be readily available or affordable for smaller redevelopment projects. Affordable environmental insurance could make conventional financing more feasible for many smaller projects.

(b) The Legislature hereby recognizes that it is in the best interests of the people of California that state funds be made available to make environmental insurance more affordable by negotiating standardized policies and by subsidizing premiums for certain projects. This insurance would be available to stimulate the redevelopment of brownfields and underutilized urban properties, resulting in the overall improvement of the community where the property is located and in the generation of a reasonable economic or social return on those investments.

SEC. 2. Section 25395.20 of the Health and Safety Code is amended to read:

25395.20. (a) For purposes of this article, the following definitions shall apply:

(1) ''Account'' means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to subdivision (b).

(2) (A) ''Brownfield'' means property that meets all of the following conditions:

(i) It is located in an urban area.

(ii) It was previously the site of an economic activity that is no longer in operation at that location.

(iii) It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of application for a loan pursuant to this article.

(B) ''Brownfield'' does not include any of the following:

(i) Property listed, or proposed for listing, on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is a brownfield described in subparagraph (C) of paragraph (6).

(3) ''Cleanup and abatement order'' means an order issued by a regional board pursuant to Section 13304 of the Water Code.

(4) ''Cleanup Loans and Environmental Assistance to Neighborhoods Program'' or ''CLEAN'' means the loan program established by the department pursuant to Section 25395.22, to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property.

(5) ''Economic activity'' means a governmental activity, a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern.

(6) ''Eligible property'' means a site that is any of the following:

(A) A brownfield.

(B) An underutilized property that is any of the following:

(i) A property described in clause (v) of subparagraph (D) of paragraph (16).

(ii) A property located in an enterprise zone established pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to Article 4 (commencing with Section 33300) of Chapter 4 of Part 1 of Division 24, or in an eligible area, as determined by the Technology, Trade, and Commerce Agency pursuant to paragraph (2) of subdivision (c) of Section 7072 of the Government Code.

(iii) A property, the redevelopment of which will result in any of the following:

(I) An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the economic activity located on the property before redevelopment occurred.

(II) An increase in property taxes paid to the local government that is at least 100 percent greater than the property taxes paid by the property owner before redevelopment occurred.

(III) Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the property after the redevelopment occurs.

(IV) Housing for very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(V) The construction of new or expanded school facilities, public day care centers, parks, or community recreational facilities.

(C) A brownfield or an underutilized property described in clause (ii) of subparagraph (B) that will be the site of a contiguous expansion of an operating industrial or commercial facility owned or operated by one of the following:

(i) A small business.

(ii) A nonprofit corporation formed under the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or the Nonprofit Religious Corporation Law (Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code).

(iii) A small business incubator that is undertaking the expansion with the assistance of a grant authorized by Section 15339.3 of the Government Code or a loan guarantee provided pursuant to Section 14090 of the Corporations Code.

(7) ''Eligible property'' does not include any of the following:

(A) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(B) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(C) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property meets the criteria specified in subparagraph (C) of paragraph (6).

(8) (A) ''Hazardous material'' means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. ''Hazardous material'' includes, but is not limited to, all of the following:

(i) A hazardous substance, as defined in Section 25281 or 25316, including the substances specified in Section 25317.

(ii) A hazardous waste, as defined in Section 25117.

(iii) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

(B) ''Hazardous material'' does not include undisturbed naturally occurring hazardous material unless it will adversely affect the reasonable use of a property after response action is completed.

(9) ''Implementation costs,'' for purposes of the expenditure of any funds pursuant to this article, includes, but is not limited to, the costs of overseeing and reviewing preliminary endangerment assessments and response actions that are financed by a loan issued pursuant to this article, including oversight conducted by a regional board pursuant to Section 25395.28.

(10) ''Investigating site contamination program'' means the loan program established by the department pursuant to Section 25395.21 to conduct a preliminary endangerment assessment of a brownfield or an underutilized urban property.

(11) ''Leaking underground fuel tank'' has the same meaning as ''tank,'' as defined in Section 25299.24.

(12) ''No longer in operation'' means an economic activity that is, or previously was, located on a property that is not conducting operations on the property of the type usually associated with the economic activity.

(13) ''Project'' means any response action, and the planned future development, included in an application for a loan pursuant to Section 25395.22.

(14) ''Property'' means real property, as defined in Section 658 of the Civil Code.

(15) ''Small business'' means an independently owned and operated business, that is not dominant in its field of operation, that, together with affiliates, has 100 or fewer employees, and that has average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years, or a business that is a manufacturer, as defined in Section 14837 of the Government Code, with 100 or fewer employees.

(16) ''Underutilized property'' means property that meets all of the following conditions:

(A) It is located in an urban area.

(B) An economic activity is conducted on the property.

(C) It is the subject of a proposal for development pursuant to this article.

(D) One of the following applies:

(i) The economic activity on the property is irregular or intermittent in nature and uses the property for productive purposes less than four months in any calendar year.

(ii) The economic activity on the property employs less than 25 percent of the property for productive purposes.

(iii) The structures, infrastructure, and other facilities on the property are antiquated, obsolete, or in such poor repair that they cannot be used

for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal.

(iv) The economic activity conducted on the property is a parking facility or an activity that offers a similar marginal economic service and the facility or activity will be replaced when the property is redeveloped.

(v) The property is adjacent to one or more brownfields or underutilized properties that are the subject of a project under this article and its inclusion in the project is necessary in order to ensure that the redevelopment of the brownfield or brownfields or underutilized property or underutilized properties occurs.

(E) An underutilized property does not include any of the following:

(i) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is an underutilized property described in subparagraph (C) of paragraph (6).

(17) ''Regional board'' means a California regional water quality control board.

(18) ''State board'' means the State Water Resources Control Board.

(19) ''Urban area'' means either of the following:

(A) The central portion of a city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile.

(B) An urbanized area as defined in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code.

(b) The Cleanup Loans and Environmental Assistance to Neighborhoods Account is hereby established in the General Fund to provide low-interest loans to qualified applicants for the purpose of funding preliminary endangerment assessments and response actions at brownfields and underutilized properties located in the state pursuant to this article, and for for any other purpose determined by the department to stimulate the redevelopment of brownfields and underutilized properties, if the department determines that the redevelopment will result in the overall improvement of the community in which the property is located and will provide a reasonable economic or social benefit, in accordance with subdivision (c). All of the following moneys shall be deposited in the account:

(1) Funds appropriated by the Legislature for the purposes of this article.

(2) Notwithstanding Section 16475 of the Government Code, any interest earned upon money deposited into the account.

(3) Proceeds from loan repayments.

(4) Proceeds from the sale of property pursuant to this article that is the subject of foreclosure or its equivalent, as defined in subdivision (f) of Section 25548.1, and proceeds from the enforcement of any other security interest.

(c) (1) Except as provided in paragraph (2), notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated without regard to fiscal years to the department for the purpose of providing loans pursuant to Sections 25395.21 and 25395.22 and for the purpose of providing subsidies for environmental insurance pursuant to Article 8.7 (commencing with Section 25395.40), the California Financial Assurance and Insurance for Redevelopment Program.

(2) The money in the account may be expended by the department, a regional board, the state board, and the agency for the implementation and administration of this article and for implementation and administration of the California Financial Assurance and Insurance for Redevelopment Program (Article 7 (commencing with Section 25395.40)), only upon appropriation by the Legislature in the annual Budget Act or in another measure.

SEC. 3. Section 25395.25 of the Health and Safety Code is amended to read:

25395.25. Upon the approval of a loan pursuant to Section 25395.23, the loan recipient shall do all of the following:

(a) Enter into an agreement with the department to repay the loan over a period of not more than seven years. If the loan is to a local government entity, or to a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, the department may delay the beginning of the loan repayment period.

(1) The agreement shall include those terms and conditions that the department deems appropriate.

(2) (A) The agreement shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the response action pursuant to the agreement, the loan recipient shall use the recovered money, except for reasonable costs and the fees incurred to recover that money, first to satisfy the loan.

(B) Notwithstanding subparagraph (A), a loan recipient is not required to first use the money recovered to repay the loan or grant if the recipient can demonstrate, to the satisfaction of the department, that the recovered money is necessary to, and is being applied to, the total environmental remediation of the property, and that the total of the

recovered money and the loan amount does not exceed the cost of remediation.

(b) (1) Enter into an agreement with the department or with the regional board or state board pursuant to Section 25395.28 for the oversight and approval of the response action at the site. This agreement shall include any necessary conditions and assurances to ensure that post-completion, ongoing operation and maintenance activities, and any necessary institutional controls on future uses of the property, are complied with. This agreement shall be provided to the department before the department may release any loan funds to the loan recipient.

(2) Notwithstanding any requirement of this division regarding cost recovery or reimbursement for oversight costs, a loan recipient is not liable for paying the department's costs pursuant to this article or the regional board's or state board's costs pursuant to Section 25395.28 associated with the oversight of the response action at the site subject to the agreement, if the department determines there are sufficient funds in the account to reimburse the department's costs pursuant to this article or the regional board's or state board's costs pursuant to Section 25395.28 for that oversight. If the department determines that the account has insufficient funds to pay for the oversight costs associated with the oversight of the response action at the site subject to the agreement, the loan recipient shall pay the department's costs pursuant to this article or the regional board's or state board's costs pursuant to Section 25395.28 for the amount of those costs.

(c) (1) Except as provided in paragraph (2), obtain secured creditor insurance, as defined in subdivision (k) of Section 25395.40, from the insurance company selected by the secretary pursuant to subdivision (b) of Section 25395.41, or comparable insurance from any insurance company with an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger that is authorized to offer environmental insurance in California. This insurance shall be obtained before the department may release any loan funds to the loan recipient.

(2) The secretary may waive the requirement of paragraph (1) to obtain insurance or any specific insurance coverage if either of the following apply:

(A) No money is available for the environmental insurance subsidies authorized pursuant to Section 25395.42.

(B) The secretary determines that the scope of the response action is limited and the cost of the premiums of the prenegotiated package of environmental insurance products equals or exceeds the estimated response action costs, or is otherwise not commercially feasible.

SEC. 4. Article 8.7 (commencing with Section 25395.40) is added to Chapter 6.8 of Division 20 of the Health and Safety Code, to read:

Article 8.7. California Financial Assurance and Insurance for Redevelopment Program

25395.40. For the purposes of this article, the following definitions shall apply:

(a) ''CLEAN Program'' means the Cleanup Loans and Environmental Assistance to Neighborhoods Program established pursuant to Section 25395.22.

(b) ''Cost overrun insurance'' means insurance that covers some, or all of the response costs caused by a known pollution condition at a site, that exceed the estimated response action costs that have been accepted and approved by the insurer, based on information from the department and other relevant sources at the time the insurance is first obtained.

(1) Cost overrun insurance shall, at a minimum, provide for all of the following:

(A) The response costs in excess of the estimated response action costs that have been accepted and approved by the insurer.

(B) A policy period of sufficient length to cover the duration of the response activities, not including post-completion operation and maintenance.

(C) A self-insured retention amount not to exceed 25 percent of the estimated response action costs that have been accepted and approved by the insurer.

(c) ''Eligible property'' has the same meaning as defined in paragraph (6) of subdivision (a) of Section 25395.20.

(d) ''Environmental insurance'' means insurance intended to limit the liability associated with the discovery and cleanup of a hazardous materials release, including secured creditor insurance, pollution liability insurance, and cost overrun insurance, and any other insurance product that the secretary selects to be provided pursuant to Section 25395.41.

(e) ''Estimated response action costs'' means the projected costs of taking a response action in implementing an approved removal action work plan or remedial action plan prepared to address a pollution condition at a site.

(f) ''FAIR'' means the Financial Assurance and Insurance for Redevelopment Program created pursuant to this article.

(g) ''Hazardous material'' means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. ''Hazardous material'' includes, but is not limited to, all of the following:

(1) A hazardous substance, as defined in Section 25281 or 25316, including the substances specified in Section 25317.

(2) A hazardous waste, as defined in Section 25117.

(3) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

(h) ''Insurance company'' means an insurance company authorized in California to offer environmental insurance and that has an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger.

(i) ''Pollution condition'' means a release or threatened release of a hazardous material and any resulting impact upon the environment.

(j) (1) ''Pollution liability insurance'' means insurance that covers damages caused by a pollution condition from, or at, a site that is preexisting and unknown, or was otherwise unknown at the time the insurance is first obtained, and, at a minimum, provides for all of the following:

(A) A minimum policy period of five years after the completion of remediation activities, not including post-completion operation and maintenance.

(B) A duty to defend and pay for defense costs in an amount at least up to the amount of coverage available under the policy, irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the damages, so long as there already exists a reasonably quantifiable legal obligation to pay those damages.

(2) For purposes of this subdivision, ''damages'' means either of the following:

(A) Property damage incurred at a site as an unforeseen and unexpected result of a pollution condition.

(B) Bodily injury, property damage, and response action costs sustained or incurred by a third party as a result of a pollution condition at a site.

(3) For purposes of this subdivision, ''damages'' includes the property damage, bodily injury, and response costs specified in paragraph (2), irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the property damage, bodily injury, or response costs, so long as there exists a reasonably quantifiable legal obligation to pay for those damages.

(k) ''Secured creditor insurance'' means insurance made available to an insured that covers all of the following:

(1) Response costs at a site incurred by the lender after a default by the borrower or foreclosure by the lender that occurs as a result of a pollution condition at the site, and the costs are reasonably necessary to remediate the site for its intended use so that it can be sold.

(2) Damages or other liability for a pollution condition at a site incurred by a lender as a result of that lender exercising a foreclosure option.

(3) Loss or damages incurred by a lender as a result of a borrower's inability to satisfy a loan obligation or due to the existence of an unforeseen and unexpected pollution condition.

(4) A duty to defend and pay for defense costs in an amount at least up to the amount of coverage available under the policy, irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the loss, damages, or liability, so long as there exists a reasonably quantifiable legal obligation to pay damages.

(*l*) ''Self-insured retention amount'' means response action costs in excess of the estimated response action costs that have been accepted and approved by the insurer that the insured is obligated to pay before being eligible to make a claim of an insurer under a cost overrun insurance policy.

(m) ''Unforeseen and unexpected response action costs'' means those costs that exceed the estimated response action costs.

25395.41. (a) The secretary shall solicit proposals for a package of environmental insurance products from insurance companies through a competitive bidding process. The request for proposal prepared by the secretary shall identify the objectives of this article and the specific types and coverage limits of the insurance products desired, including endorsements and exclusions. The request for proposal shall require that the proposal allow a purchaser the opportunity to pay for additional coverage without losing the lower transaction costs structure of the prenegotiated policy. The secretary shall hold at least one public workshop in both the northern and the southern part of the state to present and solicit comments on the request for proposal prior to receiving any proposals.

(b) (1) The secretary shall evaluate the extent to which each proposal submitted pursuant to subdivision (a) meets the objectives of the request for proposal and shall also evaluate each proposal and interested party using all of the following factors:

(A) Product pricing.

(B) Claims history.

(C) Underwriting history.

(D) Company financial strength and size.

(E) Scope of policy coverages, including endorsements and exclusions.

(F) Marketing and distribution of the insurance products.

(G) Any other factor that the secretary determines will affect the ability of the selected insurance company to meet the requirements of this article and provide the environmental insurance products in the most effective and efficient manner and at the least cost to the state and to persons seeking that insurance.

(2) The secretary shall select one or more insurance companies that have submitted a proposal pursuant to subdivision (a) to be the exclusive state-designated provider of environmental insurance under this article for a period of three years from the date of selection. The secretary shall select a company that, in his or her determination, has submitted a proposal that best meets the requirements of this article and the objectives stated in the request for proposal at the best possible price. Every three years, the secretary shall repeat the competitive bidding process specified in this section.

(c) The request for proposal prepared pursuant to subdivision (a) shall specify whether the secretary intends to select only one insurance company or more than one insurance company.

(d) An insurance company selected to provide prenegotiated environmental insurance products pursuant to subdivision (b) shall offer this prenegotiated package of insurance products to any interested recipient of a loan under the CLEAN Program. The insurance company shall also offer the environmental insurance products made available under this article to any other person who conducts a response action in the state.

(e) The secretary shall implement this section in consultation with representatives of other appropriate state agencies, including the Technology, Trade, and Commerce Agency, the Business, Transportation and Housing Agency, the Office of Planning and Research, the Pollution Control Financing Authority, the Department of Insurance, the state board, the department, and with other interested parties, including developers, lenders, insurers, and representatives from environmental organizations. The secretary shall implement this section in a manner that is consistent with the requirements for state procurement of services set forth in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

25395.42. (a) The secretary shall expend the funds from the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 25395.20 that are made available in the annual Budget Act for expenditure to subsidize the cost of the environmental insurance products offered by the insurance company selected pursuant to subdivision (b) of Section 25395.41, in accordance with subdivision (b).

(b) The secretary shall provide the following subsidies, in accordance with the application process specified in Section 25395.43, from the funds made available pursuant to subdivision (a):

(1) Up to 50 percent of the cost of the premiums for the environmental insurance products provided pursuant to subdivision (c) of Section 25395.41.

(2) (A) Up to 80 percent of the self-insured retention amount of the cost overrun insurance provided pursuant to subdivision (c) of Section 25395.41, up to a maximum of five hundred thousand dollars ($500,000).

(B) The secretary may expend the funds available to pay a portion of the self-insured retention amount of the cost overrun insurance provided pursuant to subdivision (b) of Section 25395.41 only under all of the following conditions:

(i) The insured demonstrates that it exercised reasonably prudent business judgment in insuring the cost overrun, consistent with an attempt to minimize the incurred costs, and incurred the costs through no fault of its own.

(ii) The insured pays, at a minimum, the first 20 percent of the self-insured retention amount.

(iii) The secretary determines that the amount of the payment is in the best interests of the state, taking into account the environmental and economic benefits of the specified project, as compared to the benefit of conserving funds for assistance at other sites.

25395.43. (a) Any person who is conducting a response action at an eligible property under the oversight of the department or a regional board and who purchases the prenegotiated environmental insurance products from the insurance company selected pursuant to subdivision (b) of Section 25395.41 may apply to the secretary for the subsidies that are made available pursuant to Section 25395.42. To the extent that the funds that are made available in the annual Budget Act for expenditure to subsidize the cost of the environmental insurance products provided pursuant to this article are available, an applicant is eligible for a subsidy in the order in which the applicant's application is received.

(b) An applicant for a subsidy made available pursuant to Section 25395.42 shall provide the secretary with all information necessary to demonstrate to the secretary that the applicant is eligible to receive a subsidy.

(c) The state and the Cleanup Loans and Environmental Assistance to Neighborhoods Account do not have any obligation to provide funds to any person that applies for a subsidy pursuant to this article. The secretary shall provide an applicant with a subsidy only to the extent that money in the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 25395.20 has been reserved in the annual Budget Act for the purpose of providing environmental insurance and the money that has been reserved for this purpose is available.

25395.44. If the insurance company selected to provide prenegotiated environmental insurance products pursuant to subdivision (b) of Section 25395.41 terminates its contract with the secretary or

otherwise becomes unable to honor policies written pursuant to this article, nothing in this article shall be construed to obligate the state to honor those policies or to pay any claims made on those policies.

25395.45. The agency may adopt regulations to implement this article pursuant to this section. The regulations adopted to implement this article shall be deemed to be emergency regulations for purposes of Section 11346.1 of the Government Code. Notwithstanding the 120-day limit specified in subdivision (e) of Section 11346.1 of the Government Code, those emergency regulations may remain in effect for up to 180 days.

CHAPTER 550

An act to add Chapter 19 (commencing with Section 26200) to Division 20 of the Health and Safety Code, relating to public health.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

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

(a) The problem of indoor air pollution has generated concern among the scientific and public health communities around the world.

(b) Bioaerosols, airborne particles emitted by fungi and bacteria, are among the more than 1,500 indoor air pollutants that pose potential hazards to public health.

(c) The occurrence of adverse health effects on humans from fungi can range from relatively minor symptoms, such as headache, sore throat, and fatigue, to more serious effects.

(d) While the inhalation of fungal spores is believed to contribute to allergic reactions, infections, and other adverse health effects, there is also considerable debate about practical options for the prevention and control of fungi in indoor environments.

(e) Because fungi are ubiquitous in indoor environments, the control of fungi poses a special difficulty for homeowners, building owners, tenants, and public health officers.

(f) Therefore, the State of California needs to promote a more thorough understanding of the options for addressing fungal contamination within the context of a wide array of indoor air pollutants that are frequently inadequately understood.

(g) By convening a review panel of experts to examine potential hazards, their prevention, and their remediation, the state can provide

guidance to a growing public concern about options for avoiding and remediating problems posed by fungal contamination.

SEC. 2. Chapter 19 (commencing with Section 26200) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 19. FUNGAL CONTAMINATION REVIEW PANEL AND RESEARCH PROGRAM

26200. (a) The California Research Bureau, in consultation with the State Department of Health Services, shall perform a study and publish findings on fungal contamination affecting indoor environments, in accordance with this chapter.

(b) The California Research Bureau shall organize meetings of a review panel to assist in the preparation of appropriate content for the study.

(c) The California Research Bureau shall appoint to the review panel a diverse group of professionals including, but not limited to, representatives of the following:

(1) Health officers.
(2) Environmental health directors.
(3) Experts on the health effects of fungi.
(4) Medical experts.
(5) Mold testing experts.
(6) Industrial hygienists.
(7) Engineers.

26201. The review panel shall examine the following areas relating to fungal contamination in indoor environments:

(a) Medical and public health.
(b) Evaluation and monitoring.
(c) Remediation and prevention.
(d) Educational materials.
(e) Hazard communication.
(f) Any other area identified by the review panel.

26202. The panel shall review and, to the extent resources and expertise permit, make findings on all of the following:

(a) The health effects of exposure to fungi, based on a review of the literature addressing immunology, infectious disease, and medical evaluation.

(b) The practices for assessing fungal contamination, including the use of visual inspection, surface sampling, air monitoring, and the proper analysis of environmental samples.

(c) To the extent feasible, the appropriateness of commercially available methods for identifying fungal contamination of building

components including, but not limited to, walls, ventilation systems, and support beams.

(d) The options for preventing and remediating fungal contamination in indoor environments. The findings are intended as a practical guide regarding options for building managers, homeowners, and members of the general public who may have concerns about fungal contamination in living and working environments.

(e) Recommendations on hazard communication for distinct subpopulations, including workers employed in high-risk occupations.

(f) The development of a recommended reading list related to molds, their health effects, their impacts on indoor air quality, and related topics for local government officials, including environmental health officers.

(g) Any additional topical areas deemed appropriate by the review panel.

26203. (a) By January 1, 2003, the California Research Bureau shall submit to the Legislature and the Director of Health Services the published findings of the study.

(b) (1) The findings may provide relevant information to the State Department of Health Services for the purpose of establishing standards and guidelines on fungal contamination affecting indoor environments pursuant to Chapter 18 (commencing with Section 26100).

(2) This subdivision may serve as a source of information for department programs relating to fungal contamination, including those provisions that become operative if Senate Bill 732 is enacted and adds Chapter 18 (commencing with Section 26100).

26204. Of the funds identified in provision (2) of Item 6120-011-0001 of the Budget Act of 2001, twenty-five thousand dollars ($25,000) shall be made available to be used for contracts for outside researchers pursuant to this chapter.

CHAPTER 551

An act to add Section 56213 to the Education Code, relating to special education.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 56213 is added to the Education Code, to read:

56213. If the computation made pursuant to Section 56836.15 results in a reduction in the funding of a necessary small special

education local plan area pursuant to Section 56212, compared to that local plan area's funding in the prior year, the local plan area may claim, in addition to the current year funding, an amount equal to 40 percent of the reduction.

CHAPTER 552

An act to amend Section 13961.01 of the Government Code, relating to victims of crime, and making an appropriation therefor.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 13961.01 of the Government Code is amended to read:

13961.01. (a) In addition to the additional extension for good cause authorized under Section 13961, the board may also for good cause grant an additional extension beyond three years when the claim is filed under any of the following circumstances:

(1) The application is filed by a minor derivative victim where the direct victim is permanently disabled or has died as a result of the crime.

(2) The application is filed based on a crime described in Section 261, 286, 288, 288a, 288.5, or 289 of the Penal Code, or penetration of an anal or genital opening as described in Section 289.5 of the Penal Code as it existed prior to January 1, 1995, and all of the following criteria are met:

(A) The victim was under the age of 18 years at the time the crime was committed.

(B) The crime was reported to a law enforcement agency, as defined in subdivision (p) of Section 290 of the Penal Code, or a child protective agency, as defined in Section 11165.9 of the Penal Code.

(C) The application is accompanied by either of the following:

(i) A copy of the report of the crime filed with an agency described in subparagraph (B) and a recommendation from either the investigating officer or the prosecuting attorney that the application for late filing be approved, and the application is filed within one year of the date the victim receives the recommendation.

(ii) Documentation that a complaint, information, or indictment alleging the crime giving rise to the application was filed.

(3) The direct victim has died as a result of the crime, but the fact is not discovered until after the expiration of the time limits imposed by this section.

(4) The application is filed by a victim or derivative victim of a crime for which the perpetrator or perpetrators received a sentence of death or life without possibility of parole and either of the following is true:

(A) The prosecuting attorney or a law enforcement officer documents that the victim or derivative victim filing the application was not informed of the provisions of this chapter within the time period for filing an application under subdivision (c) of Section 13961.

(B) The victim or derivative victim filing the application provides documentation that he or she received notice from the Board of Prison Terms, the Attorney General, or the prosecuting district attorney's office that a date was set for a clemency hearing or an execution of the perpetrator or perpetrators.

(b) No application shall be denied under paragraphs (1) to (4), inclusive, of subdivision (a) solely because the crime was not reported to law enforcement within a specified time period.

(c) For the purposes of this section, the board may consider applications filed with the board on or after October 4, 1993, that meet the criteria for delayed filing as set forth in subdivision (a).

(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.

CHAPTER 553

An act to add Chapter 6 (commencing with Section 116091) to Part 10 of Division 104 of the Health and Safety Code, relating to school athletics safety.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

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

(a) The National Athletic Trainers' Association (NATA) has released findings from a study of injuries to high school athletes in nearly 250 schools over a three-year period. The study found that the majority of reported injuries to high school pupils occurred during practice sessions.

(b) Injury prevention programs can substantially reduce the risk of injury to pupils and should be in place for practice sessions as well as games.

(c) The prevention of reinjury through daily injury management is a critical part of an injury prevention program.

(d) The American Medical Association has recognized the benefits of athletic training and recommends the use of certified athletic trainers in all high school athletic programs.

(e) School districts are required to provide health insurance coverage for pupils who participate in athletic programs.

(f) To begin to ensure the safety and opportunity of all pupils interested in participating in high school athletics, it is necessary to provide insurance coverage and other support systems relevant to a healthy environment for student-athletes.

SEC. 2. Chapter 6 (commencing with Section 116091) is added to Part 10 of Division 104 of the Health and Safety Code, to read:

CHAPTER 6. PILOT PROJECT FOR SCHOOL ATHLETICS SAFETY

116091. The Pupil Athletic Access and Safety Program pilot project is hereby established in the State Department of Education for the purpose of providing grants to private statewide nonprofit organizations in two regions to support a partnership to facilitate pupil participation and safety in high school interscholastic athletics that would primarily benefit low-income pupils.

116092. (a) One of the pilot projects shall be in southern California.

(b) One of the pilot projects shall be in northern California.

116093. (a) A pilot project shall use grant funds for all of the following purposes:

(1) To provide onsite nationally certified athletic trainers to participating schools. The project may provide a certified athletic trainer, or funds to help pay the costs associated with ensuring that there is an onsite athletic trainer, for at least 30 hours per week. Funds received pursuant to this section shall be used only to provide supplemental staff or services and shall not displace or reduce existing staff or services. Athletic trainers provided pursuant to this section shall not displace or reduce the hours or benefits available to any classified or certified employee who provides athletic training services for participating schools prior to the effective date of this section. A participating school that currently employs an athletic trainer shall coordinate the use of his or her services with the pilot project.

(2) To provide appropriate medical supplies and other supplies necessary to prevent and care for sports-related injuries.

(3) To provide in-service meetings for coaches and trainers, and to ensure that coaches and trainers receive first aid and CPR certification.

(4) To provide mentoring opportunities for pupils interested in the medical and athletic training fields.

(5) To provide community educational seminars for pupils, parents, trainers, coaches, and administrators on nutrition, the avoidance of drugs, and on injuries and prevention.

(6) To inform pupils about the availability of low-cost health insurance, including Medi-Cal and the Healthy Families Program.

(7) To provide strength training workshops for pupil-athletes and an off-season training program.

(b) Health care providers, including athletic trainers who participate in the pilot project shall not refer pupils to their own practice, to the practice of the other health care providers participating in the pilot project, or to the practice of other health care providers in whose practice they have a financial interest.

116094. (a) The State Department of Education shall establish a competitive grant process for private, nonprofit organizations that are registered with the Secretary of State to submit a grant application for the development, administration, and implementation of the Pupil Athletic Access and Safety Program.

(b) No later than May 1, 2002, the department, or its administering contracting entity, shall request and review proposals submitted by entities eligible for grants pursuant to this chapter. By June 1, 2002, the department, or its administering contracting entity, shall select a proposal for each of the two regions for receipt of a grant. The selected proposal shall meet the criteria set forth in this chapter and shall be selected on the basis of its ability to provide the best, most feasible service to the largest number of schools and pupils in the pilot area.

(c) Proposals shall include all of the following:

(1) A description of the program goals.

(2) A list of measurable objectives for the purpose of evaluation by the department, or its administering contracting entity.

(3) A list of public secondary schools selected for participation, and the criteria used for selection of those schools.

(4) A list of professional participants with curriculum vitae and résumés attached. Athletic trainers who are proposed to participate in the program shall be certified by the National Athletic Trainers Association.

(5) A method of ensuring medical quality for the program.

(6) The method that will be used to gather and submit data to the department, or its administering contracting entity.

(7) A clear description of the experience, expertise, and other qualifications of the private, nonprofit organization.

(8) A proposed budget for expenditure of the grant, including a proposed fundraising plan to raise the dollar-for-dollar match as required in this chapter.

(d) The department, or its administering contracting entity, upon making a selection pursuant to this chapter, shall fund the grant no later than August 1, 2002.

(e) (1) The department may expend up to 10 percent of the funds appropriated for the purposes of this chapter for the costs associated with administration of the competitive grant process, medical quality assurance and program oversight, data collection, and evaluation of the pilot project. No additional funds may be used for administration, oversight, or implementation of this program.

(2) The department may contract with a nonprofit statewide organization that specializes in administration of high school interscholastic athletic programs to function as the department's administering agency for the program. If the department enters into a contract pursuant to this paragraph, the funds provided for administrative costs as set forth in paragraph (1) shall be expended, pursuant to the contract, by the nonprofit organization in its administration of this program on behalf of the department. The administering contracting entity shall be responsible for all aspects of the program, including the establishment of the competitive grant process, the selection of grantees and awarding of grants, program administration, monitoring, and evaluation, and the report required pursuant to Section 116095.

(f) The department, or its administering contracting entity, shall monitor and evaluate the program to ensure the performance and effectiveness of the program, including the following:

(1) Success in obtaining stated goals.

(2) Success in the pupil mentoring and scholarship programs.

(3) Reduction in injuries that occur during practice sessions and during actual athletic competitions.

(4) Reduction in recurring injury incidents.

(g) For the purpose of evaluating the programs, the department, or its administering contracting entity, shall, to the extent feasible, compare available data relating to injuries that occurred during practice sessions and official competitions in the school year prior to the existence of the pilot program, with comparable data collected in the second year of the pilot program.

If data regarding injuries has not been collected prior to the establishment of the pilot program, then data submitted by each grantee during the first six months of the program shall be used as baseline data to compare against data collected in the second year.

(h) In order to be eligible to receive funds pursuant to this chapter, a pilot project shall receive matching private funds equal to the public funds received.

116095. By January 1, 2005, the department, or its administering contracting entity, shall submit a report to the Legislature on the evaluation of the pilot projects pursuant to this chapter, including the number of schools and pupils assisted by or participating in the various components of the project, and the extent to which the measurable objectives listed in the proposal were met.

SEC. 3. This act shall be subject to an appropriation in the Budget Act of 2001. It is the intent of the Legislature that funding appropriated in the Budget Act for the Pupil Athletic Access and Safety Program pilot project is a one-time appropriation for this purpose.

CHAPTER 554

An act to amend Section 7507.10 of the Business and Professions Code, and to amend Sections 14602.6, 14602.7, and 22850.5 of the Vehicle Code, relating to collateral recovery.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 7507.10 of the Business and Professions Code is amended to read:

7507.10. Each licensee shall serve a debtor with a notice of seizure as soon as possible after the recovery of collateral and not later than 48 hours, except that if the 48-hour period encompasses a Saturday, Sunday, or postal holiday, the notice of seizure shall be provided not later than 72 hours or, if the 48-hour period encompasses a Saturday or Sunday and a postal holiday, the notice of seizure shall be provided not later than 96 hours, after the repossession of collateral. The notice shall include all of the following:

(a) The name, address, and telephone number of the representative of the legal owner to be contacted regarding the repossession.

(b) The name, address, and telephone number of the representative of the repossession agency to be contacted regarding the repossession.

(c) A statement printed on the notice containing the following: ''Repossessors are regulated by the Bureau of Security and Investigative Services, Department of Consumer Affairs, Sacramento, CA 95814. Repossessors are required to provide you, not later than 48 hours after the recovery of collateral, with an inventory of personal effects or other personal property recovered during repossession unless the 48-hour period encompasses a Saturday, Sunday, or a postal holiday, then the

inventory shall be provided no later than 96 hours after the recovery of collateral.''

(d) A disclosure that ''Damage to a vehicle during or subsequent to a repossession and only while the vehicle is in possession of the repossession agency and which is caused by the repossession agency is the liability of the repossession agency. A mechanical or tire failure shall not be the responsibility of the repossession agency unless the failure is due to the negligence of the repossession agency.''

(e) If applicable, a disclosure that ''Environmental, Olympic, special interest, or other license plates issued pursuant to Article 8 (commencing with Section 5000), Article 8.4 (commencing with Section 5060) or Article 8.5 (commencing with Section 5100) of Chapter 1 of Division 3 of the Vehicle Code that remain the personal effects of the debtor will be removed from the collateral and inventoried, and that if the plates are not claimed by the debtor within 60 days, they will be destroyed.''

(f) A disclosure of the charges payable by the debtor to the repossession agency for the storage of the collateral and personal effects from the date of repossession until release of the property from storage.

The notice may be given by regular mail addressed to the last known address of the debtor or by personal service at the option of the repossession agency.

SEC. 2. Section 14602.6 of the Vehicle Code is amended to read:

14602.6. (a) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked or without ever having been issued a license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle, without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days' impoundment when the legal owner redeems the impounded vehicle.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852.

(c) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (a) of Section 14602.5.

(d) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days' impoundment under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

(C) When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Section 13200) of Chapter 2 of Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division 6.

(2) No vehicle shall be released pursuant to this subdivision, except upon presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(e) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(f) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 days' impoundment if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(3) The legal owner or the legal owner's agent presents either lawful foreclosure documents or an affidavit of repossession for the vehicle, and a security agreement or title showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The impounding agency may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued

pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

No administrative costs authorized under subdivision (a) of Section 22850.5 shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city and county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency shall not require any documents other than those specified in this paragraph.

As used in this paragraph, ''foreclosure documents'' means an ''assignment'' as that term is defined in subdivision (o) of Section 7500.1 of the Business and Professions Code.

(g) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (f) shall not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless the registered owner is a rental car agency, until after the termination of the 30-day impoundment period.

(2) The legal owner or the legal owner's agent shall not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(h) (1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of 30 days' impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency shall not rent another vehicle to the driver of the vehicle that was seized until 30 days after the date that the vehicle was seized.

(3) The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(i) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges authorized under Section 22850.5, and any parking fines, penalties, and administrative fees incurred by the registered owner.

(j) The impounding agency shall not be liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with the provisions of this section.

SEC. 2.5. Section 14602.6 of the Vehicle Code is amended to read:

14602.6. (a) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked or without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle, without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days' impoundment when the legal owner redeems the impounded vehicle. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852.

(c) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (a) of Section 14602.5.

(d) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days' impoundment under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

(C) When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Section 13200) of Chapter 2 of Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division 6.

(D) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.

(E) When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance.

(2) No vehicle shall be released pursuant to this subdivision without presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(e) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(f) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 days' impoundment if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(3) The legal owner or the legal owner's agent presents either lawful foreclosure documents or an affidavit of repossession for the vehicle, and a security agreement or title showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The impounding agency may require the agent of the legal owner to produce a photocopy

or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

No administrative costs authorized under subdivision (a) of Section 22850.5 shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city or county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency shall not require any documents other than those specified in this paragraph.

As used in this paragraph, ''foreclosure documents'' means an ''assignment'' as that term is defined in subdivision (o) of Section 7500.1 of the Business and Professions Code.

(g) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (f) may not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless the registered owner is a rental car agency, until after the termination of the 30-day impoundment period.

(2) The legal owner or the legal owner's agent may not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(h) (1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of 30 days' impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency may not rent another vehicle to the driver of the vehicle that was seized until 30 days after the date that the vehicle was seized.

(3) The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(i) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges authorized under Section 22850.5, and any parking fines, penalties, and administrative fees incurred by the registered owner.

(j) The impounding agency shall not be liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with the provisions of this section.

SEC. 3. Section 14602.7 of the Vehicle Code is amended to read:

14602.7. (a) A magistrate presented with the affidavit of a peace officer establishing reasonable cause to believe that a vehicle, described by vehicle type and license number, was an instrumentality used in the peace officer's presence in violation of Sections 2800.1, 2800.2, 2800.3, or 23103, shall issue a warrant or order authorizing any peace officer to immediately seize and cause the removal of the vehicle. The warrant or court order may be entered into a computerized data base. A vehicle so impounded may be impounded for a period not to exceed 30 days.

The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded and providing the owner with a copy of the warrant or court order. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days impoundment when a legal owner redeems the impounded vehicle.

(b) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of the impoundment period and without the permission of the magistrate authorizing the vehicle's seizure under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of the business establishment, including a parking service or repair garage.

(C) When the registered owner of the vehicle causes a peace officer to reasonably believe, based on the totality of the circumstances, that the registered owner was not the driver who violated Section 2800.1, 2800.2, or 2800.3, the agency shall immediately release the vehicle to the registered owner or his or her agent.

(2) No vehicle shall be released pursuant to this subdivision, except upon presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of the court.

(c) (1) Whenever a vehicle is impounded under this section, the magistrate ordering the storage shall provide the vehicle's registered and legal owners of record, or their agents, with the opportunity for a poststorage hearing to determine the validity of the storage.

(2) A notice of the storage shall be mailed or personally delivered to the registered and legal owners within 48 hours after issuance of the warrant or court order, excluding weekends and holidays, by the person or agency executing the warrant or court order, and shall include all of the following information:

(A) The name, address, and telephone number of the agency providing the notice.

(B) The location of the place of storage and a description of the vehicle, which shall include, if available, the name or make, the manufacturer, the license plate number, and the mileage of the vehicle.

(C) A copy of the warrant or court order and the peace officer's affidavit, as described in subdivision (a).

(D) A statement that, in order to receive their poststorage hearing, the owners, or their agents, are required to request the hearing from the magistrate issuing the warrant or court order in person, in writing, or by telephone, within 10 days of the date of the notice.

(3) The poststorage hearing shall be conducted within two court days after receipt of the request for the hearing.

(4) At the hearing, the magistrate may order the vehicle released if he or she finds any of the circumstances described in subdivision (b) or (e) that allow release of a vehicle by the impounding agency. The magistrate may also consider releasing the vehicle when the continued impoundment will cause undue hardship to persons dependent upon the vehicle for employment or to a person with a community property interest in the vehicle.

(5) Failure of either the registered or legal owner, or his or her agent, to request, or to attend, a scheduled hearing satisfies the poststorage hearing requirement.

(6) The agency employing the peace officer who caused the magistrate to issue the warrant or court order shall be responsible for the costs incurred for towing and storage if it is determined in the poststorage hearing that reasonable grounds for the storage are not established.

(d) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(e) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of the impoundment period and without the permission of the magistrate authorizing the seizure of the vehicle if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a financial interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(3) The legal owner or the legal owner's agent presents either lawful foreclosure documents or a certificate of repossession and a security agreement or title showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The impounding agency may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

No administrative costs authorized under subdivision (a) of Section 22850.5 shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city and county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency shall not require any documents other than those specified in this paragraph.

As used in this paragraph, ''foreclosure documents'' means an ''assignment'' as that term is defined in subdivision (o) of Section 7500.1 of the Business and Professions Code.

(f) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (e) shall not release the vehicle to the registered owner of the vehicle or any agents of the registered owner,

unless a registered owner is a rental car agency, until the termination of the impoundment period.

(2) The legal owner or the legal owner's agent shall not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and the administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining the custody of the vehicle.

(g) (1) A vehicle impounded and seized under subdivision (a) shall be released to a rental car agency prior to the end of the impoundment period if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency shall not rent another vehicle to the driver who used the vehicle that was seized to evade a police officer until 30 days after the date that the vehicle was seized.

(3) The rental car agency may require the person to whom the vehicle was rented and who evaded the peace officer to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(h) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment and the administrative charges authorized under Section 22850.5 and any parking fines, penalties, and administrative fees incurred by the registered owner.

(i) (1) This section does not apply to vehicles abated under the Abandoned Vehicle Abatement Program pursuant to Sections 22660 to 22668, inclusive, and Section 22710, or to vehicles impounded for investigation pursuant to Section 22655, or to vehicles removed from private property pursuant to Section 22658.

(2) This section does not apply to abandoned vehicles removed pursuant to Section 22669 that are determined by the public agency to have an estimated value of three hundred dollars ($300) or less.

(j) The impounding agency shall not be liable to the registered owner for the improper release of the vehicle to the legal owner or the legal

owner's agent provided the release complies with the provisions of this section.

SEC. 4. Section 22850.5 of the Vehicle Code is amended to read:

22850.5. (a) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution establishing procedures for the release of properly impounded vehicles and for the imposition of a charge equal to its administrative costs relating to the removal, impound, storage, or release of the vehicles. Those administrative costs may be waived by the local or state authority upon verifiable proof that the vehicle was reported stolen at the time the vehicle was removed.

(b) The following apply to any charges imposed for administrative costs pursuant to subdivision (a):

(1) The charges shall only be imposed on the registered owner or the agents of that owner and shall not include any vehicle towed under an abatement program or sold at a lien sale pursuant to Sections 3068.1 to 3074, inclusive, of, and Section 22851 of, the Civil Code unless the sale is sufficient in amount to pay the lienholder's total charges and proper administrative costs.

(2) Any charges shall be collected by the local or state authority only from the registered owner or an agent of the registered owner.

(3) The charges shall be in addition to any other charges authorized or imposed pursuant to this code.

(4) No charge may be imposed for any hearing or appeal relating to the removal, impound, storage, or release of a vehicle unless that hearing or appeal was requested in writing by the registered or legal owner of the vehicle or an agent of that registered or legal owner. In addition, the charge may be imposed only upon the person requesting that hearing or appeal.

No administrative costs authorized under subdivision (a) shall be charged to the legal owner who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city and county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency shall not require the legal owner or the legal owner's agent to produce any documents other than those specified in paragraph (3) of subdivision (f) of Section 14602.6 or paragraph (3) of subdivision (e) of Section 14602.7.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 14602.6 of the Vehicle Code proposed by both this bill and AB 360. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 14602.6 of the Vehicle Code, and (3) this bill is enacted after AB 360, in which case Section 2 of this bill shall not become operative.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 555

An act to amend Section 50517.5 of, and to add Section 50517.10 to, the Health and Safety Code, relating to housing, and making an appropriation therefor.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 50517.5 of the Health and Safety Code is amended to read:

50517.5. (a) (1) The department shall establish the Joe Serna, Jr. Farmworker Housing Grant Program under which, subject to the availability of funds therefor, grants shall be made to local public entities and nonprofit corporations for the construction or rehabilitation of housing for agricultural employees and their families. Under this program, grants may also be made for the purchase of land in connection with housing assisted pursuant to this section and for the construction and rehabilitation of related support facilities necessary to the housing. In its administration of this program, the department shall disburse grant funds to the local public entities and nonprofit corporations or may, at the request of the local public entity or nonprofit corporation that sponsors and supervises the rehabilitation program, disburse grant funds to agricultural employees who are participants in a rehabilitation program sponsored and supervised by the local public entity or nonprofit corporation. No part of a grant made pursuant to this section may be used for project organization or planning.

(2) The program shall be administered by the Director of Housing and Community Development and officers and employees of the department as he or she may designate.

(b) (1) The Joe Serna, Jr. Farmworker Housing Grant Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the

Government Code, all money in the fund is continuously appropriated to the department for making grants pursuant to this section and Section 50517.10 and for costs incurred by the department in administering these grant programs.

(2) There shall be paid into the fund the following:

(A) Any moneys appropriated and made available by the Legislature for purposes of the fund.

(B) Any moneys that the department receives in repayment or return of grants from the fund, including any interest therefrom.

(C) Any other moneys that may be made available to the department for the purposes of this chapter from any other source or sources.

(c) Grants made pursuant to this section shall be matched by grantees with at least equal amounts of federal moneys, other cash investments, or in-kind contributions.

(d) With respect to the supervision of grantees, the department shall do the following:

(1) Establish minimum capital reserves to be maintained by grantees.

(2) Fix and alter from time to time a schedule of rents that may be necessary to provide residents of housing assisted pursuant to this section with affordable rents to the extent consistent with the maintenance of the financial integrity of the housing project. No grantee shall increase the rent on any unit constructed or rehabilitated with the assistance of funds granted pursuant to this section without the prior permission of the department, which shall be given only if the grantee affirmatively demonstrates that the increase is required to defray necessary operating costs or avoid jeopardizing the fiscal integrity of the housing project.

(3) Determine standards for, and control selection by grantees of, tenants and subsequent purchasers of housing constructed or rehabilitated with the assistance of funds granted pursuant to this section.

(4) (A) Require as a condition precedent to a grant of funds that the grantee be record owner in fee of the assisted real property and that the grantee shall have entered into a written agreement with the department binding upon the grantee and successors-in-interest to the grantee. The agreement shall include the conditions under which the funds advanced may be repaid. The agreement shall include provisions for a lien on the assisted real property in favor of the State of California for the purpose of securing performance of the agreement. The agreement shall also provide that the lien shall endure until released by the Director of Housing and Community Development.

(B) In the event that funds granted pursuant to this section constitute less than 25 percent of the total development cost or value, whichever is applicable, of a project assisted under this section, the department may

adopt, by regulation, criteria for determining the number of units in a project to which the restrictions on occupancy contained in the agreement apply. In no event may these regulations provide for the application of the agreement to a percentage of units in a project that is less than the percentage of total development costs that funds granted pursuant to this section represent.

(C) Contemporaneously with the disbursement of the initial funds to a grantee, the department shall cause to be recorded, in the office of the county recorder of the county in which the assisted real property is located, a notice of lien executed by the Director of Housing and Community Development. The notice of lien shall refer to the agreement required by this paragraph for which it secures and it shall include a legal description of the assisted real property that is subject to the lien. The notice of lien shall be indexed by the recorder in the Grantor Index to the name of the grantee and in the Grantee Index to the name of the State of California, Department of Housing and Community Development. The department shall adopt by regulation criteria for the determination of the lien period. This regulation shall take into account whether the property is held by multifamily rental, single-family ownership, or cooperative ownership and whether it is new construction or rehabilitative construction.

(D) Pursuant to regulations adopted by the department, the department may execute and cause to be recorded in the office of the recorder of the county in which a notice of lien has been recorded, a subordination of the lien. The regulations adopted by the department shall provide that any subordination of the lien shall not jeopardize the security interest of the state and shall further the interest of farmworker housing. The recitals contained in the subordination shall be conclusive in favor of any bona fide purchaser or lender relying thereon.

(5) Regulate the terms of occupancy agreements or resale controls, to be used in housing assisted pursuant to this section.

(6) Provide bilingual services and publications, or require grantees to do so, as necessary to implement the purposes of this section.

(7) The agreement between the department and the grantee shall provide, among other things, that both of the following occur:

(A) Upon the sale or conveyance of the real property, or any part thereof, for use other than for agricultural employee occupancy, the grantee or its successors shall, as a condition for the release of the lien provided pursuant to paragraph (4), repay to the fund the department's grant funds.

(B) Upon the sale or conveyance of the real property or any part thereof for continued agricultural employee occupancy, the transferee shall assume the obligation of the transferor and the real property shall be transferred to the new owner; provided that the transferee agrees to

abide by the agreement entered into between the transferor and the department and that the new owner takes the property subject to the lien provided pursuant to paragraph (4), except that this lien shall, at the time of the transfer of the property to the new owner, be extended for an additional lien period determined by the department pursuant to paragraph (4), and the new owner shall not be credited with the lien period that had run from the time the transferor had acquired the property to the time of transfer to the new owner, unless the department determines that it is in the best interest of the state and consistent with the intent of this section to so credit the lien period to the new owner. However, the lien shall have priority as of the recording date of the lien for the original grantee, pursuant to paragraph (4).

(e) The department may do any of the following with respect to grantees:

(1) Through its agents or employees enter upon and inspect the lands, buildings, and equipment of a grantee, including books and records, at any time before, during, or after construction or rehabilitation of units assisted pursuant to this section. However, there shall be no entry or inspection of any unit that is occupied, whether or not any occupant is actually present, without the consent of the occupant.

(2) Supervise the operation and maintenance of any housing assisted pursuant to this section and order repairs as may be necessary to protect the public interest or the health, safety, or welfare of occupants of the housing.

(f) The department shall include in its annual report required by Section 50408, a current report of the Joe Serna, Jr. Farmworker Housing Grant Program. The report shall include, but need not be limited to, (1) the number of households assisted, (2) the average income of households assisted and the distribution of annual incomes among assisted households, (3) the rents paid by households assisted, (4) the number and amount of grants made to each nonprofit corporation and local public entity in the preceding year, (5) the dollar value of funding derived from sources other than the state for each project receiving a grant under this section, and an identification of each source, (6) recommendations, as needed, to improve operations of the program and respecting the desirability of extending its application to other groups in rural areas identified by the department as having special need for state housing assistance, and (7) the number of manufactured housing units assisted under this section.

(g) As used in this section:

(1) ''Agricultural employee'' has the same meaning as specified in subdivision (b) of Section 1140.4 of the Labor Code, but also includes any person who works at a packing shed for a labor contractor or other entity that contracts with an agricultural employer in order to perform

services in connection with handling, drying, packing, or storing any agricultural commodity in its raw or natural state, whether or not this person is encompassed within the definition specified in subdivision (b) of Section 1140.4 of the Labor Code.

(2) ''Grantee'' means the local public entity or nonprofit corporation that is awarded the grant under this section and, at the request thereof, may include an individual homeowner receiving direct payment of a grant for rehabilitation under this section who occupies the assisted housing both before and after the rehabilitation and who is a participant in a rehabilitation program sponsored and supervised by a local public entity or nonprofit corporation.

(3) ''Housing'' may include, but need not be limited to, conventionally constructed units and manufactured housing.

(h) The department may provide the assistance offered pursuant to this chapter in any area where there is a substantial unmet need for farmworker housing.

SEC. 1.5. Section 50517.5 of the Health and Safety Code is amended to read:

50517.5. (a) (1) The department shall establish the Joe Serna, Jr. Farmworker Housing Grant Program under which, subject to the availability of funds therefor, grants or loans, or both, shall be made to local public entities, nonprofit corporations, and limited partnerships, for the construction or rehabilitation of housing for agricultural employees and their families. Under this program, grants or loans, or both, may also be made for the cost of acquiring the land and any building thereon in connection with housing assisted pursuant to this section and for the construction and rehabilitation of related support facilities necessary to the housing. In its administration of this program, the department shall disburse grants or loans, or both, to the local public entities , nonprofit corporations, or limited partnerships or may, at the request of the local public entity , nonprofit corporation, or limited partnership that sponsors and supervises the rehabilitation or construction program, disburse grant funds to agricultural employees who are participants in a rehabilitation or construction program sponsored and supervised by the local public entity, nonprofit corporation, or limited partnership. No part of a grant or loan made pursuant to this section may be used for project organization or planning.

(2) Notwithstanding any other provision of this chapter, upon the request of a grantee, if funds are used in conjunction with low-income housing tax credits, the program also may loan funds to a grantee at no more than 3 percent simple interest. Principal and accumulated interest is due and payable upon completion of the term of the loan. For any loan made pursuant to this subdivision, the performance requirements of the

lien shall remain in effect for a period of no less than the original term of the loan.

(3) The program shall be administered by the Director of Housing and Community Development and officers and employees of the department as he or she may designate.

(b) (1) The Joe Serna, Jr. Farmworker Housing Grant Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the department for making grants or loans, or both, pursuant to this section and Section 50517.10, for purposes of Chapter 8.5 (commencing with Section 50710), and for costs incurred by the department in administering these programs.

(2) There shall be paid into the fund the following:

(A) Any moneys appropriated and made available by the Legislature for purposes of the fund.

(B) Any moneys that the department receives in repayment or return of grants or loans from the fund, including any interest therefrom.

(C) Any other moneys that may be made available to the department for the purposes of this chapter from any other source or sources.

(D) All moneys appropriated to the department for the purposes of Chapter 8.5 (commencing with Section 50710) and any moneys received by the department from the occupants of housing or shelter provided pursuant to Chapter 8.5 (commencing with Section 50710). These moneys shall be separately accounted for from the other moneys deposited in the fund.

(c) Grants and loans made pursuant to this section shall be matched by grantees with at least equal amounts of federal moneys, other cash investments, or in-kind contributions.

(d) With respect to the supervision of grantees, the department shall do the following:

(1) Establish minimum capital reserves to be maintained by grantees.

(2) Fix and alter from time to time a schedule of rents that may be necessary to provide residents of housing assisted pursuant to this section with affordable rents to the extent consistent with the maintenance of the financial integrity of the housing project. No grantee shall increase the rent on any unit constructed or rehabilitated with the assistance of funds provided pursuant to this section without the prior permission of the department, which shall be given only if the grantee affirmatively demonstrates that the increase is required to defray necessary operating costs or avoid jeopardizing the fiscal integrity of the housing project.

(3) Determine standards for, and control selection by grantees of, tenants and subsequent purchasers of housing constructed or

rehabilitated with the assistance of funds provided pursuant to this section.

(4) (A) Require as a condition precedent to a grant or loan, or both, of funds that the applicant have site control that is satisfactory to the department; that the grantee be record owner in fee of the assisted real property or provide other security that is satisfactory to the department to ensure compliance with the construction, financial, and program obligations; and that the grantee shall have entered into a written agreement with the department binding upon the grantee and successors in interest to the grantee. The agreement shall include the conditions under which the funds advanced may be repaid. The agreement shall include provisions for a lien on the assisted real property in favor of the State of California for the purpose of securing performance of the agreement. The agreement shall also provide that the lien shall endure until released by the Director of Housing and Community Development.

(B) In the event that funds granted or loaned pursuant to this section constitute less than 25 percent of the total development cost or value, whichever is applicable, of a project assisted under this section, the department may adopt, by regulation, criteria for determining the number of units in a project to which the restrictions on occupancy contained in the agreement apply. In no event may these regulations provide for the application of the agreement to a percentage of units in a project that is less than the percentage of total development costs that funds granted or loaned pursuant to this section represent.

(C) Contemporaneously with the disbursement of the initial funds to a grantee, the department shall cause to be recorded, in the office of the county recorder of the county in which the assisted real property is located, a notice of lien executed by the Director of Housing and Community Development. The notice of lien shall refer to the agreement required by this paragraph for which it secures and it shall include a legal description of the assisted real property that is subject to the lien. The notice of lien shall be indexed by the recorder in the Grantor Index to the name of the grantee and in the Grantee Index to the name of the State of California, Department of Housing and Community Development. The department shall adopt by regulation criteria for the determination of the lien period. This regulation shall take into account whether the property is held by multifamily rental, single-family ownership, or cooperative ownership and whether it is new construction or rehabilitative construction.

(D) Pursuant to regulations adopted by the department, the department may execute and cause to be recorded in the office of the recorder of the county in which a notice of lien has been recorded, a subordination of the lien. The regulations adopted by the department shall provide that any subordination of the lien shall not jeopardize the

security interest of the state and shall further the interest of farmworker housing. The recitals contained in the subordination shall be conclusive in favor of any bona fide purchaser or lender relying thereon.

(5) Regulate the terms of occupancy agreements or resale controls, to be used in housing assisted pursuant to this section.

(6) Provide bilingual services and publications, or require grantees to do so, as necessary to implement the purposes of this section.

(7) The agreement between the department and the grantee shall provide, among other things, that both of the following occur:

(A) Upon the sale or conveyance of the real property, or any part thereof, for use other than for agricultural employee occupancy, the grantee or its successors shall, as a condition for the release of the lien provided pursuant to paragraph (4), repay to the fund the department's grant and loan funds.

(B) Upon the sale or conveyance of the real property or any part thereof for continued agricultural employee occupancy, the transferee shall assume the obligation of the transferor and the real property shall be transferred to the new owner; provided that the transferee agrees to abide by the agreement entered into between the transferor and the department and that the new owner takes the property subject to the lien provided pursuant to paragraph (4), except that this lien shall, at the time of the transfer of the property to the new owner, be extended for an additional lien period determined by the department pursuant to paragraph (4), and the new owner shall not be credited with the lien period that had run from the time the transferor had acquired the property to the time of transfer to the new owner, unless the department determines that it is in the best interest of the state and consistent with the intent of this section to so credit the lien period to the new owner. However, the lien shall have priority as of the recording date of the lien for the original grantee, pursuant to paragraph (4).

(e) The department may do any of the following with respect to grantees:

(1) Through its agents or employees enter upon and inspect the lands, buildings, and equipment of a grantee, including books and records, at any time before, during, or after construction or rehabilitation of units assisted pursuant to this section. However, there shall be no entry or inspection of any unit that is occupied, whether or not any occupant is actually present, without the consent of the occupant.

(2) Supervise the operation and maintenance of any housing assisted pursuant to this section and order repairs as may be necessary to protect the public interest or the health, safety, or welfare of occupants of the housing.

(f) The department shall include in its annual report required by Section 50408, a current report of the Joe Serna, Jr. Farmworker Housing

Grant Program. The report shall include, but need not be limited to, (1) the number of households assisted, (2) the average income of households assisted and the distribution of annual incomes among assisted households, (3) the rents paid by households assisted, (4) the number and amount of grants or loans, or both, made to each grantee in the preceding year, (5) the dollar value of funding derived from sources other than the state for each project receiving a grant or loan, or both, under this section, and an identification of each source, (6) recommendations, as needed, to improve operations of the program and respecting the desirability of extending its application to other groups in rural areas identified by the department as having special need for state housing assistance, and (7) the number of manufactured housing units assisted under this section.

(g) As used in this section:

(1) ''Agricultural employee'' has the same meaning as specified in subdivision (b) of Section 1140.4 of the Labor Code, but also includes any person who works at a packing shed for a labor contractor or other entity that contracts with an agricultural employer in order to perform services in connection with handling, drying, packing, or storing any agricultural commodity in its raw or natural state, whether or not this person is encompassed within the definition specified in subdivision (b) of Section 1140.4 of the Labor Code.

(2) ''Grantee'' means the local public entity , nonprofit corporation, or limited partnership that is awarded the grant or loan, or both, under this section, and, at the request thereof, may include an agricultural employee receiving direct payment of a grant for rehabilitation under this section who occupies the assisted housing both before and after the rehabilitation and may include an agricultural employee receiving direct payment of a grant for construction under this section who will occupy the assisted housing and who is a participant in a rehabilitation or construction program sponsored and supervised by a local public entity , nonprofit corporation, or limited partnership.

(3) ''Housing'' may include, but is not necessarily limited to, conventionally constructed units and manufactured housing.

(4) ''Limited partnership'' means a limited partnership where all of the general partners are nonprofit mutual or public benefit corporations.

(h) The department may provide the assistance offered pursuant to this chapter in any area where there is a substantial unmet need for farmworker housing.

SEC. 2. Section 50517.10 is added to the Health and Safety Code, to read:

50517.10. In addition to the purposes specified in subdivision (a) of Section 50517.5, the department may make grants and loans under the Joe Serna, Jr. Farmworker Housing Grant Program to local public entities and nonprofit corporations in order to establish capitalized

operating reserves for short-term occupancy housing for migrant farmworker households, purchase land for, and construct, housing structures for short-term occupancy by migrant farmworker households, lease or purchase existing structures for short-term occupancy by migrant farmworker households, and directly rent or lease housing for short-term occupancy by migrant farmworker households.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 50517.5 of the Health and Safety Code proposed by both this bill and AB 1160. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 50517.5 of the Health and Safety Code, and (3) this bill is enacted after AB 1160, in which case Section 50517.5 of the Health and Safety Code, as amended by AB 1160, 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.

CHAPTER 556

An act to amend Sections 13848.4 and 13848.6 of the Penal Code, relating to the high technology crimes.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 13848.4 of the Penal Code is amended to read:

13848.4. (a) All funds appropriated to the Office of Criminal Justice Planning for the purposes of this chapter shall be deposited in the High Technology Theft Apprehension and Prosecution Program Trust Fund, which is hereby established. The fund shall be under the direction and control of the executive director. Moneys in the fund, upon appropriation by the Legislature, shall be expended to implement this chapter.

(b) Moneys in the High Technology Theft Apprehension and Prosecution Program Trust Fund shall be expended to fund programs to enhance the capacity of local law enforcement and prosecutors to deter, investigate, and prosecute high technology-related crimes. After deduction of the actual and necessary administrative costs referred to in subdivision (f), the High Technology Theft Apprehension and Prosecution Program Trust Fund shall be expended to fund programs to enhance the capacity of local law enforcement, state police, and local prosecutors to deter, investigate, and prosecute high technology-related

crimes. Any funds distributed under this chapter shall be expended for the exclusive purpose of deterring, investigating, and prosecuting high technology-related crimes.

(c) Up to 10 percent of the funds shall be used for developing and maintaining a statewide data base on high technology crime for use in developing and distributing intelligence information to participating law enforcement agencies. In addition, the Executive Director of the Office of Criminal Justice Planning may allocate and award up to 5 percent of the funds available to public agencies or private nonprofit organizations for the purposes of establishing statewide programs of education, training, and research for public prosecutors, investigators, and law enforcement officers relating to deterring, investigating, and prosecuting high technology-related crimes. Any funds not expended in a fiscal year for these purposes shall be distributed to regional high technology theft task forces pursuant to subdivision (b).

(d) Any regional task force receiving funds under this section may elect to have the Department of Justice administer the regional task force program. The department may be reimbursed for any expenditures incurred for administering a regional task force from funds given to local law enforcement pursuant to subdivision (b).

(e) The Office of Criminal Justice Planning shall distribute funds in the High Technology Theft Apprehension and Prosecution Program Trust Fund to eligible agencies pursuant to subdivision (b) in consultation with the High Technology Crime Advisory Committee established pursuant to Section 13848.6.

(f) Administration of the overall program and the evaluation and monitoring of all grants made pursuant to this chapter shall be performed by the Office of Criminal Justice Planning, provided that funds expended for these functions shall not exceed 5 percent of the total amount made available under this chapter.

SEC. 2. Section 13848.6 of the Penal Code is amended to read:

13848.6. (a) The High Technology Crime Advisory Committee is hereby established for the purpose of formulating a comprehensive written strategy for addressing high technology crime throughout the state and to advise the Office of Criminal Justice Planning on the appropriate disbursement of funds to regional task forces.

(b) This strategy shall be designed to be implemented through regional task forces. In formulating that strategy, the committee shall identify various priorities for law enforcement attention, including the following goals:

(1) To apprehend and prosecute criminal organizations, networks, and groups of individuals engaged in the following activities:

(A) Theft of computer components and other high technology products.

(B) Violations of Penal Code Sections 211, 350, 351a, 459, 496, 537e, 593d, and 593e.

(C) Theft of telecommunications services and other violations of Penal Code Sections 502.7 and 502.8.

(D) Counterfeiting of negotiable instruments and other valuable items through the use of computer technology.

(E) Creation and distribution of counterfeit software and other digital information, including the use of counterfeit trademarks to misrepresent the origin of that software or digital information.

(2) To apprehend and prosecute individuals and groups engaged in the unlawful access, destruction, or unauthorized entry into and use of private, corporate, or government computers and networks, including wireless and wireline communications networks and law enforcement dispatch systems, and the theft, interception, manipulation, destruction, and unauthorized disclosure of data stored within those computers.

(3) To apprehend and prosecute individuals and groups engaged in the theft of trade secrets.

(4) To investigate and prosecute high technology crime cases requiring coordination and cooperation between regional task forces and local, state, federal, and international law enforcement agencies.

(c) The Executive Director of the Office of Criminal Justice Planning shall appoint the following members to the committee:

(1) A designee of the California District Attorneys Association.

(2) A designee of the California State Sheriffs Association.

(3) A designee of the California Police Chiefs Association.

(4) A designee of the Attorney General.

(5) A designee of the California Highway Patrol.

(6) A designee of the High Tech Criminal Investigators Association.

(7) A designee of the Office of Criminal Justice Planning.

(8) A designee of the American Electronic Association to represent California computer system manufacturers.

(9) A designee of the American Electronic Association to represent California computer software producers.

(10) A designee of the California Cellular Carriers Association.

(11) A representative of the California Internet industry.

(12) A designee of the Semiconductor Equipment and Materials International.

(13) A designee of the California Cable Television Association.

(14) A designee of the Motion Picture Association of America.

(15) A designee of either the California Telephone Association or the California Association of Long Distance Companies. This position shall rotate every other year between designees of the two associations.

(16) A designee of the Science and Technology Agency, if Senate Bill 1136 is enacted, and, as enacted, creates the Science and Technology

Agency, otherwise, a designee of the Department of Information Technology.

(17) A representative of the California banking industry.

(d) The Executive Director of the Office of Criminal Justice Planning shall designate the Chair of the High Technology Crime Advisory Committee from the appointed members.

(e) The advisory committee shall not be required to meet more than 12 times per year. The advisory committee may create subcommittees of its own membership, and each subcommittee shall meet as often as the subcommittee members find necessary. It is the intent of the Legislature that all advisory committee members shall actively participate in all advisory committee deliberations required by this chapter.

Any member who, without advance notice to the executive director and without designating an alternative representative, misses three scheduled meetings in any calendar year for any reason other than severe temporary illness or injury (as determined by the Executive Director of the Office of Criminal Justice Planning) shall automatically be removed from the advisory committee. If a member wishes to send an alternative representative in his or her place, advance written notification of this substitution shall be presented to the executive director. This notification shall be required for each meeting the appointed member elects not to attend.

Members of the advisory committee shall receive no compensation for their services, but shall be reimbursed for travel and per diem expenses incurred as a result of attending meetings sponsored by the Office of Criminal Justice Planning under this chapter.

(f) The executive director, in consultation with the High Technology Crime Advisory Committee, shall develop specific guidelines and administrative procedures for the selection of projects to be funded by the High Technology Theft Apprehension and Prosecution Program, which guidelines shall include the following selection criteria:

(1) Each regional task force that seeks funds shall submit a written application to the committee setting forth in detail the proposed use of the funds.

(2) In order to qualify for the receipt of funds, each proposed regional task force submitting an application shall provide written evidence that the agency meets either of the following conditions:

(A) The regional task force devoted to the investigation and prosecution of high technology-related crimes is comprised of local law enforcement and prosecutors, and has been in existence for at least one year prior to the application date.

(B) At least one member of the task force has at least three years of experience in investigating or prosecuting cases of suspected high technology crime.

(3) In order to qualify for funds, a regional task force shall be comprised of local law enforcement and prosecutors from at least two counties. At the time of funding, the proposed task force shall also have at least one investigator assigned to it from a state law enforcement agency. Each task force shall be directed by a local steering committee composed of representatives of participating agencies and members of the local high technology industry.

(4) Additional criteria that shall be considered by the advisory committee in awarding grant funds shall include, but not be limited to, the following:

(A) The number of high technology crime cases filed in the prior year.

(B) The number of high technology crime cases investigated in the prior year.

(C) The number of victims involved in the cases filed.

(D) The total aggregate monetary loss suffered by the victims, including individuals, associations, institutions, or corporations, as a result of the high technology crime cases filed, and those under active investigation by that task force.

(5) Each regional task force that has been awarded funds authorized under the High Technology Theft Apprehension and Prosecution Program during the previous grant-funding cycle, upon reapplication for funds to the committee in each successive year, shall be required to submit a detailed accounting of funds received and expended in the prior year in addition to any information required by this section. The accounting shall include all of the following information:

(A) The amount of funds received and expended.

(B) The use to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type.

(C) The number of filed complaints, investigations, arrests, and convictions that resulted from the expenditure of the funds.

(g) The committee shall annually review the effectiveness of the regional task forces created in deterring, investigating, and prosecuting high technology crimes and provide its findings in a report to the Legislature and the Governor. This report shall be based on information provided by the regional task forces in an annual report to the committee which shall detail the following:

(1) Facts based upon, but not limited to, the following:

(A) The number of high technology crime cases filed in the prior year.

(B) The number of high technology crime cases investigated in the prior year.

(C) The number of victims involved in the cases filed.

(D) The number of convictions obtained in the prior year.

(E) The total aggregate monetary loss suffered by the victims, including individuals, associations, institutions, corporations, and other relevant public entities, according to the number of cases filed, investigations, prosecutions, and convictions obtained.

(2) An accounting of funds received and expended in the prior year, which shall include all of the following:

(A) The amount of funds received and expended.

(B) The uses to which those funds were put, including payment of salaries and expenses, purchase of supplies, and other expenditures of funds.

(C) Any other relevant information requested.

CHAPTER 557

An act to amend Section 52922 of the Education Code, relating to the International Baccalaureate Program, and making an appropriation therefor.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 52922 of the Education Code is amended to read:

52922. (a) From funds appropriated for the purpose of this chapter, the Superintendent of Public Instruction shall annually allocate to each school district, on behalf of each public high school or middle school within the district that offers an International Baccalaureate Program, the amount of up to twenty-five thousand dollars ($25,000) for each participating high school and middle school to cover the ongoing costs of professional development required by the program and to help pay the test fees for low- and middle-income pupils in need of financial assistance, in accordance with criteria adopted by the Superintendent of Public Instruction.

(b) From funds appropriated for the purpose of this chapter, the Superintendent of Public Instruction shall allocate the amount of up to fifteen thousand dollars ($15,000) to each school that is awarded a grant by the Superintendent of Public Instruction to start up an International Baccalaureate Program. The Superintendent of Public Instruction shall not award any grants that exceed the funding made available for that

fiscal year for the purpose of startup grants. In awarding grants, the Superintendent of Public Instruction shall first award grants to all eligible high schools, giving priority to those high schools that have the highest percentage of pupils from low-income families and to those high schools that have been awarded affiliate status from the International Baccalaureate Organization. After grants have been awarded to all eligible high schools, the Superintendent of Public Instruction shall then award grant funds to eligible middle schools, giving priority to those middle schools that have the highest percentage of pupils from low-income families and those middle schools that have been awarded affiliate status from the International Baccalaureate Organization.

(c) For the 2001–02 fiscal year, grants for middle school programs allocated pursuant to this section shall not exceed one hundred thousand dollars ($100,000).

(d) The amounts provided in subdivisions (a) and (b) shall be increased annually by a cost-of-living adjustment, based on the same percentage increase that is provided to the revenue limits of unified school districts with 2,501 or more units of average daily attendance.

(e) The total amount allocated pursuant to subdivisions (a) and (b) shall not exceed the total amount of the funds appropriated for those purposes in the annual Budget Act or any other statute. If funds are insufficient to fully fund all grants authorized, annual grants shall first be allocated pursuant to subdivision (a) to those schools that were funded in the prior year and in the amount of the prior year grant.

SEC. 2. From the unencumbered balance, as of July 1, 2001, of the amount appropriated by Section 2 of Chapter 794 of the Statutes of 1998, one hundred forty thousand six hundred dollars ($140,600) is hereby reappropriated to the Superintendent of Public Instruction for allocation to school districts for the 2001–02 fiscal year for the purposes of subdivisions (c) and (d) of Section 52922.

CHAPTER 558

An act relating to pupil performance, and making an appropriation therefor.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

I am signing Assembly Bill 876 which would appropriate $100,000 to the State Department of Education to conduct a study of reading programs in schools with grades K-6 where at least 75 percent of the pupils have scored at or above the 80th percentile on the Standardized Testing and Reporting Program (STAR).

Ensuring that students learn to read is one of my primary education priorities. I am signing this measure but eliminating the appropriation. I am asking the Superintendent of Public Instruction to perform this study within existing resources.

Further, the state has provided millions of dollars for the development and adoption of English-Language Arts Academic Content Standards and Reading/Language Arts Frameworks. In addition, it is anticipated that the State Board Education will adopt reading/language arts materials by early 2002, all of which can be used to assist schools in developing successful reading programs.

GRAY DAVIS, Governor

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

SECTION 1. There is hereby appropriated one hundred thousand dollars ($100,000) from the General Fund to the State Department of Education for the purpose of contracting for a study that identifies reading programs in schools that maintain any kindergarten or grades 1 to 6, inclusive, where the performance of 75 percent of the pupils was at or above the 80th percentile on the reading portion of the achievement tests administered pursuant to the Standardized Testing and Reporting Program, based upon pupil demographics, including, but not limited to, socioeconomic status and ethnicity.

CHAPTER 559

An act to amend Section 311.11 of the Penal Code, relating to child pornography.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 311.11 of the Penal Code is amended to read:

311.11. (a) Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a public offense and shall be punished by imprisonment in the county jail for up to one year, or by

a fine not exceeding two thousand five hundred dollars ($2,500), or by both the fine and imprisonment.

(b) If a person has been previously convicted of a violation of this section, or of a violation of subdivision (b) of Section 311.2, or subdivision (b) of Section 311.4, he or she is guilty of a felony and shall be punished by imprisonment for two, four, or six years.

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

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.

CHAPTER 560

An act to amend Sections 2941 and 2943 of the Civil Code, relating to real property.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 2941 of the Civil Code is amended to read:

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

(b) (1) Within 30 calendar days after the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall execute and deliver to the trustee the original note, deed

of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(A) The trustee shall execute the full reconveyance and shall record or cause it to be recorded in the office of the county recorder in which the deed of trust is recorded within 21 calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance, the fee that may be charged pursuant to subdivision (e), recorder's fees, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(B) The trustee shall deliver a copy of the reconveyance to the beneficiary, its successor in interest, or its servicing agent, if known. The reconveyance instrument shall specify the trustor as the person to whom the recorder will deliver the recorded instrument pursuant to Section 27321 of the Government Code.

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

(D) If the note or deed of trust, or any copy of the note or deed of trust, is electronic, upon satisfaction of an obligation secured by a deed of trust, any electronic original, or electronic copy which has not been previously marked solely for use as a copy, of the note and deed of trust, shall be altered to indicate that the obligation is paid in full.

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

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

(A) The release shall set forth:

(i) The name of the beneficiary.

(ii) The name of the trustor.

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

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

(v) The date and amount of payment.

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

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

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

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

(7) A beneficiary may, at its discretion, in accordance with the requirements and procedures of Section 2934a, substitute the title company conducting the escrow through which the obligation is satisfied for the trustee of record, in which case the title company assumes the obligation of a trustee under this subdivision, and may collect the fee authorized by subdivision (e).

(8) In lieu of delivering the original note and deed of trust to the trustee within 30 days of loan satisfaction, as required by paragraph (1) of subdivision (b), a beneficiary who executes and delivers to the trustee a request for a full reconveyance within 30 days of loan satisfaction may, within 120 days of loan satisfaction, deliver the original note and deed of trust to either the trustee or trustor. If the note and deed of trust are delivered as provided in this paragraph, upon satisfaction of the note and deed of trust, the note and deed of trust shall be altered to indicate that the obligation is paid in full. Nothing in this paragraph alters the requirements and obligations set forth in paragraphs (2) and (3).

(c) For the purposes of this section, the phrases ''cause to be recorded'' and ''cause it to be recorded'' include, but are not limited to, sending by certified mail with the United States Postal Service or by an independent courier service using its tracking service that provides documentation of receipt and delivery, including the signature of the recipient, the full reconveyance or certificate of discharge in a recordable form, together with payment for all required fees, in an envelope addressed to the county recorder's office of the county in which the deed of trust or mortgage is recorded. Within two business days from the day of receipt, if received in recordable form together with all required fees,

the county recorder shall stamp and record the full reconveyance or certificate of discharge. Compliance with this subdivision shall entitle the trustee to the benefit of the presumption found in Section 641 of the Evidence Code.

(d) The violation of this section shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation, and shall require that the violator forfeit to that person the sum of five hundred dollars ($500).

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

(2) If the fee charged pursuant to this subdivision does not exceed forty-five dollars ($45), the fee is conclusively presumed to be reasonable.

(3) The fee described in paragraph (1) may not be charged unless demand for the fee was included in the payoff demand statement described in Section 2943.

(f) For purposes of this section, ''original'' may include an optically imaged reproduction when the following requirements are met:

(1) The trustee receiving the request for reconveyance and executing the reconveyance as provided in subdivision (b) is an affiliate or subsidiary of the beneficiary or an affiliate or subsidiary of the assignee of the beneficiary, respectively.

(2) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document.

(3) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management.

(4) Written authentication identifying the optical image reproduction as an unaltered copy of the note, deed of trust, or mortgage shall be stamped or printed on the optical image reproduction.

(g) No fee or charge may be imposed on the trustor in connection with, or relating to, any act described in this section except as expressly authorized by this section.

(h) The amendments to this section enacted at the 1999–2000 Regular Session shall apply only to a mortgage or an obligation secured by a deed of trust that is satisfied on or after January 1, 2001.

(i) (1) In any action filed before January 1, 2002, that is dismissed as a result of the amendments to this section enacted at the 2001–02 Regular Session, the plaintiff shall not be required to pay the defendant's costs.

(2) Any claimant, including a claimant in a class action lawsuit, whose claim is dismissed or barred as a result of the amendments to this section enacted at the 2001–02 Regular Session, may, within 6 months of the dismissal or barring of the action or claim, file or refile a claim for actual damages occurring before January 1, 2002, that were proximately caused by a time lapse between loan satisfaction and the completion of the beneficiary's obligations as required under paragraph (1) of subdivision (b). In any action brought under this section, the defendant may be found liable for actual damages, but may not be found liable for any civil penalty authorized by Section 2941.

(j) Notwithstanding any other penalties, if a beneficiary collects a fee for reconveyance and thereafter has knowledge, or should have knowledge, that no reconveyance has been recorded, the beneficiary shall cause to be recorded the reconveyance, or in the event a release of obligation is earlier and timely recorded, the beneficiary shall refund to the trustor the fee charged to perform the reconveyance. Evidence of knowledge includes, but is not limited to, notice of a release of obligation pursuant to paragraph (3) of subdivision (b).

SEC. 2. Section 2943 of the Civil Code is amended to read:

2943. (a) As used in this section:

(1) ''Beneficiary'' means a mortgagee or beneficiary of a mortgage or deed of trust, or his or her assignees.

(2) ''Beneficiary statement'' means a written statement showing:

(A) The amount of the unpaid balance of the obligation secured by the mortgage or deed of trust and the interest rate, together with the total amounts, if any, of all overdue installments of either principal or interest, or both.

(B) The amounts of periodic payments, if any.

(C) The date on which the obligation is due in whole or in part.

(D) The date to which real estate taxes and special assessments have been paid to the extent the information is known to the beneficiary.

(E) The amount of hazard insurance in effect and the term and premium of that insurance to the extent the information is known to the beneficiary.

(F) The amount in an account, if any, maintained for the accumulation of funds with which to pay taxes and insurance premiums.

(G) The nature and, if known, the amount of any additional charges, costs, or expenses paid or incurred by the beneficiary which have become a lien on the real property involved.

(H) Whether the obligation secured by the mortgage or deed of trust can or may be transferred to a new borrower.

(3) ''Delivery'' means depositing or causing to be deposited in the United States mail an envelope with postage prepaid, containing a copy of the document to be delivered, addressed to the person whose name and address is set forth in the demand therefor. The document may also be transmitted by facsimile machine to the person whose name and address is set forth in the demand therefor.

(4) ''Entitled person'' means the trustor or mortgagor of, or his or her successor in interest in, the mortgaged or trust property or any part thereof, any beneficiary under a deed of trust, any person having a subordinate lien or encumbrance of record thereon, the escrowholder licensed as an agent pursuant to Division 6 (commencing with Section 17000) of the Financial Code, or the party exempt by virtue of Section 17006 of the Financial Code who is acting as the escrowholder.

(5) ''Payoff demand statement'' means a written statement, prepared in response to a written demand made by an entitled person or authorized agent, setting forth the amounts required as of the date of preparation by the beneficiary, to fully satisfy all obligations secured by the loan that is the subject of the payoff demand statement. The written statement shall include information reasonably necessary to calculate the payoff amount on a per diem basis for the period of time, not to exceed 30 days, during which the per diem amount is not changed by the terms of the note.

(b) (1) A beneficiary, or his or her authorized agent, shall, within 21 days of the receipt of a written demand by an entitled person or his or her authorized agent, prepare and deliver to the person demanding it a true, correct, and complete copy of the note or other evidence of indebtedness with any modification thereto, and a beneficiary statement.

(2) A request pursuant to this subdivision may be made by an entitled person or his or her authorized agent at any time before, or within two months after, the recording of a notice of default under a mortgage or deed of trust, or may otherwise be made more than 30 days prior to the entry of the decree of foreclosure.

(c) A beneficiary, or his or her authorized agent, shall, on the written demand of an entitled person, or his or her authorized agent, prepare and deliver a payoff demand statement to the person demanding it within 21 days of the receipt of the demand. However, if the loan is subject to a recorded notice of default or a filed complaint commencing a judicial foreclosure, the beneficiary shall have no obligation to prepare and deliver this statement as prescribed unless the written demand is

received prior to the first publication of a notice of sale or the notice of the first date of sale established by a court.

(d) (1) A beneficiary statement or payoff demand statement may be relied upon by the entitled person or his or her authorized agent in accordance with its terms, including with respect to the payoff demand statement reliance for the purpose of establishing the amount necessary to pay the obligation in full. If the beneficiary notifies the entitled person or his or her authorized agent of any amendment to the statement, then the amended statement may be relied upon by the entitled person or his or her authorized agent as provided in this subdivision.

(2) If notification of any amendment to the statement is not given in writing, then a written amendment to the statement shall be delivered to the entitled person or his or her authorized agent no later than the next business day after notification.

(3) Upon the dates specified in subparagraphs (A) and (B) any sums that were due and for any reason not included in the statement or amended statement shall continue to be recoverable by the beneficiary as an unsecured obligation of the obligor pursuant to the terms of the note and existing provisions of law.

(A) If the transaction is voluntary, the entitled party or his or her authorized agent may rely upon the statement or amended statement upon the earlier of (i) the close of escrow, (ii) transfer of title, or (iii) recordation of a lien.

(B) If the loan is subject to a recorded notice of default or a filed complaint commencing a judicial foreclosure, the entitled party or his or her authorized agent may rely upon the statement or amended statement upon the acceptance of the last and highest bid at a trustee's sale or a court supervised sale.

(e) The following provisions apply to a demand for either a beneficiary statement or a payoff demand statement:

(1) If an entitled person or his or her authorized agent requests a statement pursuant to this section and does not specify a beneficiary statement or a payoff demand statement the beneficiary shall treat the request as a request for a payoff demand statement.

(2) If the entitled person or the entitled person's authorized agent includes in the written demand a specific request for a copy of the deed of trust or mortgage, it shall be furnished with the written statement at no additional charge.

(3) The beneficiary may, before delivering a statement, require reasonable proof that the person making the demand is, in fact, an entitled person or an authorized agent of an entitled person, in which event the beneficiary shall not be subject to the penalties of this section until 21 days after receipt of the proof herein provided for. A statement in writing signed by the entitled person appointing an authorized agent

when delivered personally to the beneficiary or delivered by registered return receipt mail shall constitute reasonable proof as to the identity of an agent. Similar delivery of a policy of title insurance, preliminary report issued by a title company, original or photographic copy of a grant deed or certified copy of letters testamentary, guardianship, or conservatorship shall constitute reasonable proof as to the identity of a successor in interest, provided the person demanding a statement is named as successor in interest in the document.

(4) If a beneficiary for a period of 21 days after receipt of the written demand willfully fails to prepare and deliver the statement, he or she is liable to the entitled person for all damages which he or she may sustain by reason of the refusal and, whether or not actual damages are sustained, he or she shall forfeit to the entitled person the sum of three hundred dollars ($300). Each failure to prepare and deliver the statement, occurring at a time when, pursuant to this section, the beneficiary is required to prepare and deliver the statement, creates a separate cause of action, but a judgment awarding an entitled person a forfeiture, or damages and forfeiture, for any failure to prepare and deliver a statement bars recovery of damages and forfeiture for any other failure to prepare and deliver a statement, with respect to the same obligation, in compliance with a demand therefor made within six months before or after the demand as to which the award was made. For the purposes of this subdivision, ''willfully'' means an intentional failure to comply with the requirements of this section without just cause or excuse.

(5) If the beneficiary has more than one branch, office, or other place of business, then the demand shall be made to the branch or office address set forth in the payment billing notice or payment book, and the statement, unless it specifies otherwise, shall be deemed to apply only to the unpaid balance of the single obligation named in the request and secured by the mortgage or deed of trust which is payable at the branch or office whose address appears on the aforesaid billing notice or payment book.

(6) The beneficiary may make a charge not to exceed thirty dollars ($30) for furnishing each required statement. The provisions of this paragraph shall not apply to mortgages or deeds of trust insured by the Federal Housing Administrator or guaranteed by the Administrator of Veterans Affairs.

(f) The preparation and delivery of a beneficiary statement or a payoff demand statement pursuant to this section shall not change a date of sale established pursuant to Section 2924g.

SEC. 3. The Legislature finds and declares all of the following:

(a) That, prior to this act, Section 2941, read as a whole, required that within 60 calendar days of satisfaction of an obligation secured by a deed of trust, the trustee was to execute and record or cause to be recorded, or

alternatively, deliver to escrow, a full reconveyance pursuant to paragraph (2) of subdivision (c), and that the beneficiary was to deliver to the trustee such documents as were necessary for the trustee to perform within this timeframe.

(b) That delivery of a full reconveyance within 60 calendar days of satisfaction of an obligation to an escrow that had closed was not a violation of Section 2941 if, by such delivery, the reconveyance was actually recorded by the former escrowholder as a voluntary accommodation to the trustee.

(c) That, in order for the trustee to act, as required by subparagraph (A) of paragraph (1) of subdivision (b) of Section 2941, within 21 calendar days of receipt of the necessary documents from the beneficiary, and meet its obligation under paragraph (2) of subdivision (b) to execute and record, or cause to be recorded, the deed of reconveyance within 60 calendar days of satisfaction of the obligation, the time allowed for the beneficiary to perform its obligations under paragraph (1) of subdivision (b) was 39 calendar days.

(d) That, Section 2941, as it existed prior to this act, was violated if either the beneficiary failed to deliver to the trustee, within 39 calendar days of satisfaction of the obligation, the documents necessary to reconvey the deed of trust by the trustee, or the trustee failed to record or cause to be recorded a full reconveyance, pursuant to paragraph (1) of subdivision (b), or, alternatively, deliver to escrow a full reconveyance pursuant to paragraph (2) of subdivision (c), within 21 calendar days of receipt of the necessary documents from the beneficiary.

(e) That the trustee satisfied its obligation to cause a reconveyance to be recorded where it delivered to a closed escrow a full reconveyance within 60 calendar days of satisfaction of an obligation if, by that delivery, the reconveyance was actually recorded by the former escrowholder as a voluntary accommodation to the trustee.

(f) That this act is intended to specifically abrogate the decision in Bartold v. Glendale Federal Bank (2000) 81 Cal.App.4th 816, to the extent that it is contrary to this clarification of existing law.

(g) That subdivision (j) of Section 2941, added by this act, does not represent a change in current law, but is declarative of existing law.

CHAPTER 561

An act to amend Section 42285.3 of the Education Code, relating to school finance.

[Approved by Governor October 5, 2001. Filed with
Secretary of State October 7, 2001.]

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

SECTION 1. Section 42285.3 of the Education Code is amended to read:

42285.3. (a) Notwithstanding subdivision (b) of Section 42280 or any other provision of law, a unified school district that is the only school district in a county, that has received more than two million seven hundred thousand dollars ($2,700,000) in federal Forest Reserve funds in the 1992–93 school year and less than one million three hundred thousand dollars ($1,300,000) in federal Forest Reserve funds in the 1996–97 school year, and that has fewer than 4,501 units of average daily attendance in the 1997–98 school year or in subsequent school years shall be eligible to receive apportionments pursuant to the schedules for a ''necessary small school'' and a ''necessary small high school,'' as set forth in this article, for up to the total number of schools in the district that would have met the criteria for classification as a necessary small school or a necessary small high school in the 1996–97 fiscal year, if the district had fewer than 2,501 units of average daily attendance in the 1996–97 fiscal year, except that this section shall not apply in any school year in which an otherwise eligible school district receives more than two million dollars ($2,000,000) in federal Forest Reserve funds.

(b) A school district that receives apportionments pursuant to the schedules for a necessary small school and a necessary small high school under subdivision (a) shall report to the State Department of Education and the Department of Finance by July 1, 2001, concerning the district's plan to address the district's need for additional funding when this section is repealed.

(c) This section 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.

CHAPTER 562

An act to add and repeal Section 65892.13 of the Government Code, relating to wind energy.

[Approved by Governor October 5, 2001. Filed with
Secretary of State October 7, 2001.]

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

SECTION 1. Section 65892.13 is added to the Government Code, to read:

65892.13. (a) The Legislature finds and declares all of the following:

(1) California has a shortage of reliable electricity supply, which has led the Governor to proclaim a state of emergency and to issue numerous executive orders to lessen, and mitigate the effects of, the shortage. The executive orders, among other things, expedite and shorten the processing of applications for existing and new powerplants, establish an emergency siting process for peaking and renewable powerplants, and relax existing air pollutant emission requirements in order to allow power generation facilities to continue generating much needed electricity.

(2) Wind energy is an abundant, renewable, and nonpolluting energy resource. When converted to electricity, it reduces our dependence on nonrenewable energy resources and reduces air and water pollution that result from conventional sources. Distributed small wind energy systems also enhance the reliability and power quality of the power grid, reduce peak power demands, increase in-state electricity generation, diversify the state's energy supply portfolio, and make the electricity supply market more competitive by promoting consumer choice.

(3) In 2000, the Legislature and Governor recognized the need to promote all feasible adoption of clean, renewable, and distributed energy sources by enacting the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code). As set forth in Section 399.6 of the Public Utilities Code, the stated objectives of the act include to ''increase, in the near term, the quantity of California's electricity generated by in-state renewable energy resources while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.''

(4) Small wind energy systems, designed for onsite home, farm, and small commercial use, are recognized by the Legislature and the State Energy Resources Conservation and Development Commission as an excellent technology to help achieve the goals of increased in-state electricity generation, reduced demand on the state electric grid, increased consumer energy independence, and nonpolluting electricity generation. In June 2001, the commission adopted a Renewable Investment Plan that includes one hundred one million two hundred fifty thousand dollars ($101,250,000) over the next five years, in the form of a 50 percent buydown incentive for the purchasers of ''emerging renewable technologies,'' including small wind energy systems.

(5) In light of the state's electricity supply shortage and its existing program to encourage the adoption of small wind energy systems, it is the intent of the Legislature that any ordinances regulating small wind energy systems adopted by local agencies have the effect of providing for the installation and use of small wind energy systems and that provisions in these ordinances relating to matters including, but not limited to, parcel size, tower height, noise, notice, and setback requirements do not unreasonably restrict the ability of homeowners, farms, and small businesses to install small wind energy systems in zones in which they are authorized by local ordinance. It is the policy of the state to promote and encourage the use of small wind energy systems and to limit obstacles to their use.

(b) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of small wind energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that this section apply to all local agencies, including, but not limited to, charter cities, charter counties, and charter cities and counties.

(c) The following definitions govern this section:

(1) ''Small wind energy system'' means a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity that does not exceed the allowable rated capacity under the Emerging Renewables Fund of the Renewables Investment Plan administered by the California Energy Commission and which will be used primarily to reduce onsite consumption of utility power.

(2) ''Tower height'' means the height above grade of the fixed portion of the tower, excluding the wind turbine.

(d) Any local agency may, by ordinance, provide for the installation of small wind energy systems in the jurisdiction outside an ''urbanized area,'' as defined in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code pursuant to this section. The local agency may establish a process for the issuance of a conditional use permit for small wind energy systems.

(1) The ordinance may impose conditions on the installation of small wind energy systems that include, but are not limited to, notice, tower height, setback, view protection, aesthetics, aviation, and design safety requirements. However, the ordinance shall not require conditions on notice, tower height, setbacks, noise level, turbine approval, tower drawings, and engineering analysis, or line drawings that are more restrictive than the following:

(A) Notice of an application for installation of a small wind energy system shall be provided to property owners within 300 feet of the property on which the system is to be located.

(B) Tower heights of not more than 65 feet shall be allowed on parcels between one and five acres and tower heights of not more than 80 feet shall be allowed on parcels of five acres or more, provided that the application includes evidence that the proposed height does not exceed the height recommended by the manufacturer or distributor of the system.

(C) Setbacks for the system tower shall be no farther from the property line than the height of the system, provided that it also complies with any applicable fire setback requirements pursuant to Section 4290 of the Public Resources Code.

(D) Decibel levels for the system shall not exceed the lesser of 60 decibels (dBA), or any existing maximum noise levels applied pursuant to the noise element of a general plan for the applicable zoning classification in a jurisdiction, as measured at the closest neighboring inhabited dwelling, except during short-term events such as utility outages and severe wind storms.

(E) The system's turbine must have been approved by the California Energy Commission as qualifying under the Emerging Renewables Fund of the commission's Renewables Investment Plan or certified by a national program recognized and approved by the Energy Commission.

(F) The application shall include standard drawings and an engineering analysis of the system's tower, showing compliance with the Uniform Building Code or the California Building Standards Code and certification by a professional mechanical, structural, or civil engineer licensed by this state. However, a wet stamp shall not be required, provided that the application demonstrates that the system is designed to meet the most stringent wind requirements (Uniform Building Code wind exposure D), the requirements for the worst seismic class (Seismic 4), and the weakest soil class, with a soil strength of not more than 1,000 pounds per square foot, or other relevant conditions normally required by a local agency.

(G) The system shall comply with all applicable Federal Aviation Administration requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports, and the State Aeronautics Act (Part 1 (commencing with Section 21001) of Division 9 of the Public Utilities Code).

(H) The application shall include a line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code.

(2) The ordinance may require the applicant to provide information demonstrating that the system will be used primarily to reduce onsite consumption of electricity. The ordinance may also require the application to include evidence, unless the applicant does not plan to connect the system to the electricity grid, that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator.

(3) A small wind energy system shall not be allowed where otherwise prohibited by any of the following:

(A) A local coastal program and any implementing regulations adopted pursuant to the California Coastal Act, Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) The California Coastal Commission, pursuant to the California Coastal Act, Division 20 (commencing with Section 30000) of the Public Resources Code.

(C) The regional plan and any implementing regulations adopted by the Tahoe Regional Planning Agency pursuant to the Tahoe Regional Planning Compact, Title 7.4 (commencing with Section 66800) of the Government Code.

(D) The San Francisco Bay Plan and any implementing regulations adopted by the San Francisco Bay Conservation and Development Commission pursuant to the McAteer-Petris Act, Title 7.2 (commencing with Section 66600) of the Government Code.

(E) A comprehensive land use plan and any implementing regulations adopted by an airport land use commission pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Division 9 of Part 1 of the Public Utilities Code.

(F) The Alquist-Priolo Earthquake Fault Zoning Act, Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code.

(G) A local agency to protect the scenic appearance of the scenic highway corridor designated pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code.

(H) The terms of a conservation easement entered into pursuant to Chapter 4 (commencing with Section 815) of Division 2 of Part 2 of the Civil Code.

(I) The terms of an open-space easement entered into pursuant to the Open-space Easement Act of 1974, Chapter 6.6 (commencing with Section 51070) of Division 1 of Title 5 of the Government Code.

(J) The terms of an agricultural conservation easement entered into pursuant to the California Farmland Conservancy Program Act,

Division 10.2 (commencing with Section 10200) of the Public Resources Code.

(K) The terms of a contract entered into pursuant to the Williamson Act, Chapter 7 (commencing with Section 51200) of Division 1 of Title 5 of the Government Code.

(L) The listing of the proposed site in the National Register of Historic Places or the California Register of Historical Resources pursuant to Section 5024.1 of the Public Resources Code.

(4) In the event a small wind energy system is proposed to be sited in an agricultural area that may have aircraft operating at low altitudes, the local agency shall take reasonable steps, concurrent with other notices issued pursuant to this subdivision, to notify pest control aircraft pilots registered to operate in the county pursuant to Section 11921 of the Food and Agriculture Code.

(5) Notwithstanding the requirements of paragraph (1), a local agency may, if it deems it necessary due to circumstances specific to the proposed installation, provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the installation is proposed.

(6) Nothing in this section shall be construed to alter or affect existing law regarding the authority of local agencies to review an application.

(e) Notwithstanding subdivision (f), any local agency that has not adopted an ordinance in accordance with subdivision (d) by July 1, 2002, may adopt such ordinance at a later date, but any applications that are submitted between July 1, 2002, and the adopted date of the ordinance must be approved pursuant to subdivision (f).

(f) Any local agency which has not adopted an ordinance pursuant to subdivision (d) on or before July 1, 2002, shall approve applications for a small wind energy systems by right if all of the following conditions are met:

(1) The size of the parcel where the system is located is at least one acre and is outside an ''urbanized area,'' as defined in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code.

(2) The tower height on parcels that are less than five acres does not exceed 80 feet.

(3) No part of the system, including guy wire anchors, extends closer than 30 feet to the property boundary, provided that it also complies with any applicable fire setback requirements pursuant to Section 4290 of the Public Resources Code.

(4) The system does not exceed 60 decibels (dBA), as measured at the closest neighboring inhabited dwelling, except during short-term events such as utility outages and severe wind storms.

(5) The system's turbine has been approved by the State Energy Resources Conservation and Development Commission as qualifying

under the Emerging Renewables Fund of the commission's Renewables Investment Plan or certified by a national program recognized and approved by the Energy Commission.

(6) The application includes standard drawings and an engineering analysis of the tower, showing compliance with the Uniform Building Code or the California Building Standards Code and certification by a licensed professional engineer. A wet stamp is not required if the application demonstrates that the system is designed to meet the most stringent wind requirements (Uniform Building Code wind exposure D), the requirements for the worst seismic class (Seismic 4), and the weakest soil class, with a soil strength of not more than 1,000 pounds per square foot, or other relevant conditions normally required by a local agency.

(7) The system complies with all applicable Federal Aviation Administration requirements, including any necessary approvals for installations close to airports, and the requirements of the State Aeronautics Act (Part 1 (commencing with Section 21001) of Division 9 of the Public Utilities Code).

(8) The application includes a line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code.

(9) Unless the applicant does not plan to connect the system to the electricity grid, the application includes evidence, that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator.

(10) A small wind energy system shall not be allowed where otherwise prohibited by any of the following:

(A) A local coastal program and any implementing regulations adopted pursuant to the California Coastal Act, Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) The California Coastal Commission, pursuant to the California Coastal Act, Division 20 (commencing with Section 30000) of the Public Resources Code.

(C) The regional plan and any implementing regulations adopted by the Tahoe Regional Planning Agency pursuant to the Tahoe Regional Planning Compact, Title 7.4 (commencing with Section 66800) of the Government Code.

(D) The San Francisco Bay Plan and any implementing regulations adopted by the San Francisco Bay Conservation and Development Commission pursuant to the McAteer-Petris Act, Title 7.2 (commencing with Section 66600) of the Government Code.

(E) A comprehensive land use plan and any implementing regulations adopted by an airport land use commission pursuant to

Article 3.5 (commencing with Section 21670) of Chapter 4 of Division 9 of Part 1 of the Public Utilities Code.

(F) The Alquist-Priolo Earthquake Fault Zoning Act, Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code.

(G) A local agency to protect the scenic appearance of the scenic highway corridor designated pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code.

(H) The terms of a conservation easement entered into pursuant to Chapter 4 (commencing with Section 815) of Division 2 of Part 2 of the Civil Code.

(I) The terms of an open-space easement entered into pursuant to the Open-space Easement Act of 1974, Chapter 6.6 (commencing with Section 51070) of Division 1 of Title 5 of the Government Code.

(J) The terms of an agricultural conservation easement entered into pursuant to the California Farmland Conservancy Program Act, Division 10.2 (commencing with Section 10200) of the Public Resources Code.

(K) The terms of a contract entered into pursuant to the Williamson Act, Chapter 7 (commencing with Section 51200) of Division 1 of Title 5 of the Government Code.

(L) On a site listed in the National Register of Historic Places or the California Register of Historical Resources pursuant to Section 5024.1 of the Public Resources Code.

(11) In the event that a proposed site for a small wind energy system is in an agricultural area that may have aircraft operating at low altitudes, the local agency shall take reasonable steps, concurrent with other notices issued pursuant to this subdivision, to notify pest control aircraft pilots registered to operate in the county pursuant to Section 11921 of the Food and Agriculture Code.

(12) No other local ordinance, policy, or regulation shall be the basis for a local agency to deny the siting and operation of a small wind energy system under this subdivision.

(13) No changes in the general plan shall be required to implement this subdivision. Any local agency, when amending its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the approval of small wind energy systems, must do so in a manner consistent with the requirements of this subdivision and the Permit Streamlining Act (commencing with Section 65920).

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the siting and operation of small wind energy systems.

(h) A local agency shall review an application for a small wind energy system as expeditiously as possible pursuant to the timelines established in the Permit Streamlining Act (commencing with Section 65920).

(i) Fees charged by a local agency to review an application for a small wind energy system shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(j) Any requirement of notice to property owners imposed pursuant to subdivision (d) shall ensure that responses to the notice are filed in a timely manner.

(k) This section shall become inoperative on July 1, 2005, and as of January 1, 2006, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2006, deletes or extends that date.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 563

An act to repeal Sections 765.5 and 6850.5 of the Financial Code, to amend Section 7480 of the Government Code, and to amend Sections 2321, 2327, and 2620 of, and to add Chapter 14 (commencing with Section 2890) to Part 4 of Division 4 of, the Probate Code, relating to conservatorships.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 765.5 of the Financial Code is repealed.

SEC. 2. Section 6850.5 of the Financial Code is repealed.

SEC. 3. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or

savings association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(d) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(f) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(g) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(h) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(j) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, employees of the local child support agencies, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under

this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected within the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.

(k) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its

response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(*l*) The dissemination of financial information and records pursuant to any of the following:

(1) Compliance by a financial institution with the requirements of Section 2892 of the Probate Code.

(2) Compliance by a financial institution with the requirements of Section 2893 of the Probate Code.

(3) An order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11.

(A) The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation.

(B) The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner.

(C) The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution.

(D) Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

(E) Where a court has made an order pursuant to this paragraph to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial

information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for any of the following:

(A) Disclosing information to a probate court pursuant to Sections 2892 and 2893.

(B) Disclosing information in response to a court order pursuant to paragraph (3).

(C) Complying with a court order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the court order.

SEC. 3.5. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements

prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(d) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(f) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(g) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(h) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(j) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, employees of the local child support agencies, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request

has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected within the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.

(k) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(*l*) The dissemination of financial information and records pursuant to any of the following:

(1) Compliance by a financial institution with the requirements of Section 2892 of the Probate Code.

(2) Compliance by a financial institution with the requirements of Section 2893 of the Probate Code.

(3) An order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section

186.10 or of any felony subject to the enhancement set forth in Section 186.11.

(A) The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation.

(B) The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner.

(C) The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution.

(D) Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

(E) Where a court has made an order pursuant to this paragraph to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for any of the following:

(A) Disclosing information to a probate court pursuant to Sections 2892 and 2893.

(B) Disclosing information in response to a court order pursuant to paragraph (3).

(C) Complying with a court order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the court order.

(m) Disclosure by a financial institution to a peace officer, as defined in Section 830.1 of the Penal Code, pursuant to the following:

(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the Civil Code.

(2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code, provided that the financial institution has first complied with the

requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the Financial Code.

(3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code, provided that any financial institution that is a finance lender has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 22470 of the Financial Code.

SEC. 4. Section 2321 of the Probate Code is amended to read:

2321. (a) Notwithstanding any other provision of law, the court in a conservatorship proceeding may not waive the filing of a bond, without good cause. Good cause may not be established merely by the conservator having filed a bond in another or prior proceeding.

(b) In a conservatorship proceeding, where the conservatee, having sufficient capacity to do so, has waived the filing of a bond, the court in its discretion may permit the filing of a bond in an amount less than would otherwise be required under Section 2320.

SEC. 5. Section 2327 of the Probate Code is amended to read:

2327. (a) In a conservatorship proceeding, the court shall order a separate bond for each conservatee, except where the assets of the conservatees are commingled in which case a combined bond that covers all assets may be provided.

(b) If a guardianship proceeding involves more than one ward, the court may order separate bonds, or a single bond which is for the benefit of two or more wards in that proceeding, or a combination thereof.

SEC. 6. Section 2620 of the Probate Code is amended to read:

2620. (a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court, the guardian or conservator shall present the accounting of the assets of the estate of the ward or conservatee to the court for settlement and allowance in the manner provided in Chapter 4 (commencing with Section 1060) of Part 1 of Division 3.

(b) The final court accounting of the guardian or conservator following the death of the ward or conservatee shall include a court accounting for the period that ended on the date of death and a separate accounting for the period subsequent to the date of death.

(c) Along with each court accounting, the guardian or conservator shall file all original account statements from any institution, as defined in Section 2890, or any financial institution, as defined in Section 2892, in which money or other assets of the estate are held or deposited, showing the balance as of the close of the accounting period of the court accounting. If the court accounting is the first court accounting of the guardianship or conservatorship, the guardian or conservator shall provide to the court the account statement for the account balance immediately preceding the date the conservator or guardian was appointed and the account statement or statements for the account

through the closing date of the first court accounting. This subdivision shall not apply to the public guardian if the money belonging to the estate is pooled with money belonging to other estates pursuant to Section 2940 and Article 3 (commencing with Section 7640) of Chapter 4 of Part 1 of Division 7. Nothing in this section shall affect any other duty or responsibility of the public guardian with regard to managing money belonging to the estate or filing accountings with the court.

(d) If any document to be filed with the court under this section contains the ward or conservatee's social security number or any other personal information regarding the ward or conservatee that would not ordinarily be disclosed in a court accounting, an inventory and appraisal, or other nonconfidential pleadings filed in the action, the account statement shall be attached to a separate affidavit describing the character of the document in proper form for filing, captioned ''CONFIDENTIAL FINANCIAL STATEMENT'' in capital letters. Except as otherwise ordered by the court, the clerk of the court shall keep the document confidential except to the court and subject to disclosure only upon an order of the court.

SEC. 7. Chapter 14 (commencing with Section 2890) is added to Part 4 of Division 4 of the Probate Code, to read:

CHAPTER 14. NOTIFICATION TO COURT BY INSTITUTIONS

2890. (a) When a guardian or conservator, pursuant to letters of guardianship or conservatorship of the estate, takes possession or control of any asset of the ward or conservatee held by an institution, as defined in subdivision (c), the institution shall file with the court having jurisdiction of the guardianship or conservatorship a statement containing the following information:

(1) The name of the ward or conservatee.

(2) The name of the guardian or joint guardians or conservator or joint conservators.

(3) The court case number.

(4) The name of the institution.

(5) The address of the institution.

(6) The account number of the account, if any, in which the asset was held by the ward or conservatee.

(7) A description of the asset or assets held by the institution. If an asset is a life insurance policy or annuity, the description shall include the policy number, if available. If the asset is a security listed on a public exchange, the description shall include the name and reference number, if available.

(8) The value, if known, or the estimated value otherwise, of the asset on the date the letters were issued by the court to the guardian or

conservator, to the extent this value is routinely provided in the statements from the institution to the owner.

(b) Taking possession or control of an asset includes, for purposes of this chapter, changing title to the asset, withdrawing all or any portion of the asset, or transferring all or any portion of an asset from the institution.

(c) For purposes of this chapter, ''institution'' means an insurance company, insurance broker, insurance agent, investment company, investment bank, securities broker-dealer, investment adviser, financial planner, financial adviser, or any other person who takes, holds, or controls an asset subject to a conservatorship or guardianship that is not a ''financial institution'' as defined in Section 2892.

2891. (a) The statement filed pursuant to Section 2890 shall be an affidavit by a person having authority to make the statement on behalf of the institution, as defined in Section 2890, and shall include that fact in the statement.

(b) If the affidavit and any accompanying information to be filed pursuant to this section also contains the ward or conservatee's social security number or any other personal information, including financial information regarding the ward or conservatee which would not be disclosed in an accounting, an inventory and appraisal, or any other nonconfidential pleading filed in the action, the information shall be kept confidential and subject to disclosure to any person only upon order of the court.

(c) This chapter does not apply to any trust arrangement described in subdivision (b) of Section 82 except paragraph (4) of that subdivision relating to assets held in Totten trust.

(d) No fee shall be charged by the court for the filing of the affidavit or related information as required by this section.

(e) The affidavit required by Section 2890 is not required to be filed in a proceeding more than once for each asset. However, all assets held by institutions may be listed in a single affidavit filed with the court.

(f) When a guardian or conservator takes possession or control of an asset in an institution, as defined in Section 2890, the institution may then file with the court the statement required by Section 2890 as to any or all other assets of the ward or conservatee held in the institution.

2892. (a) When a guardian or conservator, pursuant to letters of guardianship or conservatorship of the estate, opens or changes the name to an account or safe deposit box in a financial institution, as defined in subdivision (b), the financial institution shall send to the court identified in the letters of guardianship or conservatorship a statement containing the following information:

(1) The name of the person with whom the account or safe deposit box is opened or changed:

(2) The account number or reference number.

(3) The date the account or safe deposit box was opened or changed ownership pursuant to letters of guardianship or conservatorship.

(4) If the asset is held in an account in a financial institution, the balance as of the date the account was opened or changed.

(5) If the asset is held in a safe deposit box, a description of the asset, including any title, or policy number, or reference number.

(6) The name and address of the financial institution in which the asset is maintained.

(b) For purposes of this chapter, ''financial institution'' means a bank, trust, savings and loan association, savings bank, industrial bank, or credit union.

2893. (a) The written statement provided pursuant to Section 2892 by the financial institution shall be in the form of an affidavit signed by an officer of the financial institution and the officer shall provide his or her name and title in the affidavit.

(b) The affidavit required by this section is subject to disclosure under the circumstances described in subdivision (*l*) of Section 7480 of the Government Code under the California Right to Financial Privacy Act (Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code).

(c) This chapter does not apply to any trust arrangement described in subdivision (b) of Section 82 except paragraph (4) of that subdivision relating to assets held in a Totten trust.

(d) The affidavit described in Section 2892 is not required to be filed in a proceeding more than once for each asset. However, all assets held by the financial institution may be listed in a single affidavit filed with the court.

(e) If the affidavit and any accompanying information to be filed pursuant to this section also contains the ward or conservatee's social security number or any other personal information, including financial information regarding the ward or conservatee which would not be disclosed in an accounting, an inventory and appraisal, or other nonconfidential pleading filed in the action, the information shall be kept confidential and subject to disclosure to any person only upon order of the court.

SEC. 8. Section 3.5 of this bill incorporates amendments to Section 7480 of the Government Code proposed by both this bill and SB 125. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 7480 of the Government Code, and (3) this bill is enacted after SB 125, in which case Section 3 of this bill shall not become operative.

CHAPTER 564

An act to amend Item 6440-001-0001 of Section 2.00 of Chapter 106 of the Statutes of 2001, relating to higher education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Item 6440-001-0001 of Section 2.00 of Chapter 106 of the Statutes of 2001 is amended to read:

6440–001–0001—For support of University of California		3,191,176,000
Schedule:		
(1) Support	3,055,161,000	
(2) Charles R. Drew Medical Program	8,949,000	
(3) Podiatry Program	857,000	
(5) Acquired Immune Deficiency Syndrome (AIDS) Research	11,975,000	
(6) Institute of Global Conflict and Cooperation	550,000	
(7) Student Financial Aid	69,199,000	
(8) Loan Repayments	5,105,000	
(9) San Diego Supercomputer Center	4,000,000	
(11) Subject Matter Projects	35,062,000	
(13) Local projects	318,000	

Provisions:

1. The appropriations made in this item are exempt from Section 31.00 of this act.
2. None of the funds appropriated in this item may be expended to initiate major capital outlay projects by contract without prior legislative approval, except for cogeneration and energy conservation projects. Exempted projects shall be reported in a manner consistent with the reporting procedures in subdivision (d) of Section 28.00 of this act.
3. The funds appropriated in Schedule (2) are for support of University of California program of clinical

health sciences education, research, and public service, conducted in conjunction with the Charles R. Drew University of Medicine and Science, as provided for in Sections 1, 2, and 3 of Chapter 1140 of the Statutes of 1973. Of the amount appropriated, $500,000 is contingent upon the provision by the University of California of an equal amount of matching funds from its own resources. the University of California shall ensure by adequate controls that funds appropriated by Schedule (2) are expended solely for the support of the program identified in that schedule.

4. The funds appropriated in Schedule (3) are for support of a program of basic and clinical health science education and primary health care delivery research in the field of podiatry, University of California, to be conducted in conjunction with the California College of Podiatric Medicine as provided for in Sections 1 to 4, inclusive, of Chapter 1497 of the Statutes of 1974.
5. Of the amount appropriated in Schedule (1), $2,629,957 shall be available for expenditure only for support of the Northern and Southern Occupational Health Centers as established by a contract entered into with the Department of Industrial Relations pursuant to Section 50.8 of the Labor Code.
6. The funds appropriated in Schedule (7) are for support of Program 45, Student Financial Aid, to provide financial aid to needy students attending the University of California, according to the nationally accepted needs analysis methodology.
7. Of the amount appropriated in Schedule (1), $7,462,800 is for payment of energy service contracts in connection with the issuance of Public Works Board Energy Efficiency Revenue Bonds.
8. Of the amount appropriated in Schedule (8), $2,700,000 is for repayment of $25,000,000 borrowed by the University of California for deferred maintenance in the 1994–95 fiscal year. It is the intent of the Legislature to annually provide funds for that repayment purpose through the 2009–10 fiscal year.
9. Of the amount appropriated in Schedule (8), $2,405,000 is for repayment of $25,000,000 borrowed by the University of California for deferred maintenance in the 1995–96 fiscal year. It is the intent of the Legislature to annually provide

funds for that repayment purpose through the 2010–11 fiscal year.

10. Of the amount appropriated in Schedule (1), $44,753,000 is provided for new and existing outreach programs that are aimed at improving the chances for pupils from a wide diversity of backgrounds to become eligible for the University of California, as follows:

(a) The following amounts are for pupil academic development and school partnership programs and shall be matched on a one–to–one basis by the participating schools:

(1) $17,500,000 is for pupil academic development programs, including MESA, Puente, and the Early Academic Outreach Program, so that these programs may increase the number of pupils who participate in the programs and may offer services such as college admissions test preparation programs, fee waivers for Advance Placement tests, and an increased number of field trips for high school and middle school participants to visit college campuses.

(2) $10,000,000 is provided for K–12 school partnership programs to systemically reform partner schools in order to achieve long–term improvements in student success.

(3) $1,000,000 is provided for pupil academic development programs and K–12 partnership programs in the Central Valley.

(b) $4,500,000 is provided for services to community college students to promote transfer, particularly among community colleges with historically low transfer rates or a large proportion of disadvantaged students.

(d) $1,000,000 is provided for charter schools.

(e) $2,950,000 is provided for systemwide graduate and professional school outreach, to be matched by $2,000,000 in university funds.

(f) $1,500,000 is provided for long–term evaluation of the effectiveness of outreach programs, including college graduation rates for pupils who participated in the K–12 programs, regardless of the college attended.

(g) $4,553,000 over and above any funds provided under (a)(1) is provided to support MESA programs.

(h) $1,750,000 is provided for recruitment and admissions efforts intended to yield immediate short–term results, including $750,000 to support campus efforts to move toward comprehensive assessment of freshmen applications and $1,000,000 for student–initiated outreach activities focused on recruitment and mentorships aimed at high school juniors and seniors. Of the $750,000 appropriated to support campus efforts to move toward comprehensive assessment of freshmen applications, funding shall be provided to campuses contingent on the elimination of the two–tiered admissions system and the establishment of a unitary admissions review process.

10.1. It is the intent of the Legislature that the university report on the use of outreach funding provided in this item. This report should include detailed information on the outcomes and effectiveness of outreach programs. the report should be submitted to the fiscal committee of each house of the Legislature by no later than March 15, 2002.

11. Of the funds appropriated in Schedule (1), $500,000 shall be expended for the Center for Earthquake Engineering Research, contingent upon the center continuing to receive federal matching funds from the National Science Foundation.

12. Of the funds appropriated by Schedule (1), $800,000 shall be expended at the San Diego campus for research into the use of composite materials for transportation structures, contingent upon the campus continuing to receive federal matching funds. It is the intent of the Legislature that funding be provided through the 2002–03 fiscal year for this purpose.

13. Of the funds appropriated in Schedule (1), $500,000 shall be expended for viticulture and enology research contingent upon the receipt of an equal amount of private sector matching funds.

14. Of the amount appropriated in Schedule (1), $1,500,000 is for Arts Bridge programs that give university students scholarships to work as “artists in residence” in public schools. The University of

California shall ensure that 75 percent of these efforts are targeted at underperforming schools.

15. Of the amount appropriated in Schedule (1), $1,500,000 is for Community Teaching Internships for Mathematics and Science programs. These programs shall provide stipends to juniors and seniors majoring in math, science, and engineering, who work in local public schools as teaching interns.
16. Of the funds appropriated in Schedule (1), $24,000,000 is for substance abuse research at the University of California, San Francisco campus in the Neurology Department.
17. Of the amount appropriated in Schedule (1), $2,000,000 is for the California State Summer School for Math and Science.
18. Of the amount appropriated in Schedule (1), $1,000,000 is for the Welfare Policy Research Project, per Article 9.7 (commencing with Section 11526) of Chapter 2 of Part 3 of the Welfare and Institutions Code.
19. Of the amount appropriated in Schedule (1), $1,000,000 shall be used for Lupus research at UC San Francisco.
20. Of the amount appropriated in Schedule (1), $2,000,000 shall be used to expand spinal cord injury research.
21. Of the amount appropriated in Schedule (1), $5,500,000 shall be used for UC Berkeley/UCLA to support the Multi–campus Research Unit for Labor Studies.
23. Of the amount appropriated in Schedule (1), $5,000,000 is to fund the Medical Investigation of Neurodevelopmental Disorders (MIND) Institute, including $3,500,000 for research.
24. Of the amount appropriated in Schedule (1), $32,000,000 is for Internet connectivity and network infrastructure to grades K–12 schools and county offices of education, and $14,000,000 is available, on a one–time basis, for Internet 2 connectivity and infrastructure for UC campuses.
25. It is the intent of the Legislature that, of the amount appropriated in Schedule (1), $21,000,000 is to provide full marginal cost funding for 3,422 Full Time Equivalent Students state–supported enrollment conversions associated with the University of California year–round operations 2001 summer term to be used to assist efforts to rapidly increase the overall number of students

served in state–supported programs during the summer term. It is expected that the University of California will meet its 3,422 Full Time Equivalent Students enrollment conversion target for the summer of 2001 and will also have a minimum enrollment increase of 700 Full Time Equivalent Students in the summer of 2001. The university shall report to the Legislature by December 1, 2001, on whether the enrollment target has been achieved. If the University of California reports that the enrollment target was not achieved for the summer 2001 term, then a proportional amount of the $21,000,000 equivalent to the proportion by which the University of California did not meet its enrollment target will be returned to the General Fund.

It is further the intent of the Legislature that the University of California provide a campus–by–campus five–year plan that includes summer enrollment targets at all University of California general campuses, reflecting rapid growth in each summer after 2001. At a minimum, this plan shall also identify the changes the University of California is making to its summer term in the following areas: incentives provided to increase summer enrollment, financial aid packages, student services, the breadth and quality of instruction, and faculty and nonfaculty compensation, duties, and employment standards. The University of California shall submit the plan to the fiscal committees of the Legislature no later than January 15, 2002.

26. Of the amount appropriated in Schedule (1), $3,000,000 in one–time funds shall be used for Medical Marijuana Research.

30. Of the amount appropriated in Schedule (1), $5,000,000 shall be used for clinical teaching support at the university's medical centers, neuropsychiatric institutes, and dental clinics.

33. Notwithstanding any other provision of law, up to $4,000,000 in unexpended funds of the funds appropriated in Schedule (a) of Item 6440–001–0001 of the Budget Act of 1999 (Ch. 50, Stats. 1999), is available for the university to establish an endowed chair in the Neurology Department for substance abuse research. It is the intent of the Legislature that, in any year, the unexpended funds from the substance abuse

program be transferred to an endowment for the research.

34. The funds appropriated in Schedule (13) of this item shall be allocated for the following local projects:

(b) University of California Los Angeles Advanced Policy Institute: Creation of Internet resource: "Living Independently in LA"	(100,000)
(c) University of California, San Francisco: Center for Lesbian Health Research	(100,000)
(d) University of California: UC Ag extension in Monterey County	(118,000)

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

In order for the funding provided by this act to be available as soon as possible during the 2001–02 academic year, it is necessary for this act to take effect immediately.

CHAPTER 565

An act to add Section 44252.1 to the Education Code, relating to teacher credentialing.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 44252.1 is added to the Education Code, to read:

44252.1. (a) It is the intent of the Legislature that a credential candidate enrolled in a credential preparation program receive reasonable time to complete the program without meeting new requirements, including, but not limited to, requirements added by statutes, regulations, or commission standards, after the candidate's enrollment in the program. Further, to ensure that all candidates for a credential receive reasonable information and advice as they proceed through their program, the Legislature finds and declares that it is

incumbent upon credential preparation programs to inform candidates of new requirements and extension provisions available to eligible candidates.

(b) For the purposes of this section, the following terms shall have the following meanings:

(1) ''Enrolled'' refers to an individual who, on or after January 1, 2002, continuously participates in and is working toward completing the requirements for a program that meets the minimum requirements for a California preliminary multiple or single subject teaching credential as specified in Section 44259. Whether an individual is enrolled shall be subject to verification by the Commission on Teacher Credentialing.

(2) ''Continuously enrolled'' refers to an individual who has begun a teacher preparation program and does not have a break in that participation that exceeds a period of 18 months.

(c) The commission shall adopt regulations to provide a credential candidate enrolled in a commission-accredited preparation program, including, but not limited to, an internship program as defined in Article 7.5 (commencing with Section 44325) and Article 3 (commencing with Section 44450), a professional preparation program as defined in Article 7 (commencing with Section 44320), or an integrated program of professional preparation as defined in Section 44259.1 with a grace period to complete the program without meeting new requirements, including, but not limited to, requirements added by statutes, regulations, or commission standards, after the candidate's enrollment in the program. The commission shall also ensure through standards and accreditation procedures that credential preparation programs provide credential candidates with information about new requirements and extension provisions as outlined in this subdivision and subdivisions (d) and (e).

(1) The commission shall adopt regulations that provide a credential candidate enrolled in a commission-accredited preparation program time of not less than 24 months after enrollment in the program, during which time new or amended statutes, regulations, and commission standards that become effective and are imposed on credential candidates after the candidate's enrollment date shall not apply to that candidate.

(2) The commission shall allow a credential candidate an extension of time in addition to the time specified pursuant to paragraph (1) to complete a credential program under the statutes, regulations, and commission standards in place at the time of the candidate's enrollment if the candidate can demonstrate extenuating circumstances, including, but not limited to, personal or family illness, bereavement, or financial hardship and develops a plan, in consultation with the credential

preparation program, for continued progress toward completion of the preparation program.

(d) The commission shall maintain a list of candidates who are allowed an extended time period to complete the program under the statutes, regulations, and commission standards in place at the time of the candidates' enrollment prior to the effective date of a new or amended statute, regulation, or standard. This list shall include the projected date of program completion for each candidate.

(e) (1) A credential candidate enrolled in an integrated program of professional preparation pursuant to subdivision (a) of Section 44259.1 shall not be subject to any new requirements added by statute, regulation, or commission standards if that candidate is continuously enrolled in the program, as defined in paragraph (2) of subdivision (b), and does not change the type of credential or program he or she is pursuing once enrolled.

(2) A credential candidate continuously enrolled in an integrated program of professional preparation pursuant to subdivision (a) of Section 44259.1 who has completed all requirements necessary to begin the student teaching component of his or her program shall be eligible to receive an extension of 12 months, if necessary, to complete the outstanding requirements that were in place when that credential candidate began the preparation program, and shall not be subject to any new requirements added by statute, regulation, or commission standards, once that candidate begins the student teaching portion of his or her program.

(3) Nothing in this subdivision shall limit a candidate's ability to seek additional time to complete a credential pursuant to paragraph (2) of subdivision (c).

(4) This subdivision shall remain in effect only until January 1, 2006.

(5) By June 30, 2004, the commission shall report to the education policy committees in each house of the Legislature on the success of the integrated program of professional development pursuant to Section 44259.1 toward preparing teacher candidates, including, but not limited to, the number of students admitted to the teacher education component in each program, the number of students who have completed all course requirements, including student teaching, and who have applied for a credential, the number of students applying for and receiving an extension pursuant to subdivision (e), and the information collected pursuant to subdivision (d).

(f) Nothing in this section is intended to supersede subdivision (h) of Section 44259.

(g) A modification of a credentialing examination by the commission that is made as the result of a validity study or a passing standard study shall not be considered a new requirement for purposes of this section.

(h) If credential preparation coursework that a credential candidate has not yet taken is modified, the candidate shall take the modified coursework instead of the previously required coursework unless the modified coursework is not readily available, the modified coursework would result in an increased cost to the candidate, or completion of the modified coursework would delay the candidate's completion of the credential preparation program.

(i) Once a candidate has received a preliminary California teaching credential pursuant to Section 44259 and is employed as the teacher of record in a California public school, the candidate shall not be subject to any new requirements for completing the induction phase required to obtain the professional clear teaching credential pursuant to Section 44279.4, for a period not to exceed the length of time provided for the preliminary teaching credential pursuant to Section 44251.

CHAPTER 566

An act to add and repeal Title 10.2 (commencing with Section 14125) to Part 4 of the Penal Code, relating to hate crimes, and making an appropriation therefor.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

I am signing Assembly Bill 1312, which establishes an Asian Pacific American Anti-Hate Program at the Department of Justice. However, given the rapid decline of our economy and a budget shortfall of $1.1 billion through the first three months of this fiscal year alone, I am deleting the $250,000 General Fund appropriation contained in this bill and requesting the DOJ to conduct this important program using existing resources.

GRAY DAVIS, Governor

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

SECTION 1. Title 10.2 (commencing with Section 14125) is added to Part 4 of the Penal Code, to read:

TITLE 10.2. ASIAN PACIFIC ISLANDER ANTI-HATE CRIME PROGRAM

14125. (a) (1) The Asian Pacific Islander (API) Anti-Hate Crimes Program is hereby established in the Department of Justice.

(2) The Department of Justice shall designate, through a selection process to be determined by the department, a community-based

organization to partner with to develop a statewide API Anti-Hate Crimes Program.

(b) The program shall do both of the following:

(1) Create hard copy brochures and workbooks to provide to API communities throughout the state that define what are hate crimes, how to report a hate crime, how hate crimes impact a community, and community strategies on responding to hate crimes.

(2) Conduct training seminars for community organizations in order to better train them to assist themselves or other API communities in dealing with hate crimes.

(c) For purposes of this title, Asian Pacific Islander includes, but is not limited to, people of Chinese, Japanese, Filipino, Korean, Vietnamese, Asian American, Hawaiian, Guamanian, Samoan, Laotian, and Cambodian descent.

14127. The Department of Justice shall submit a report to the Legislature by March 1, 2004, describing the operation and accomplishments of the statewide API Anti-Hate Crimes Program.

14129. This title shall remain in effect only until January 1, 2005, and as of that date is repealed.

SEC. 2. (a) The sum of two hundred fifty thousand dollars ($250,000) is hereby appropriated from the General Fund to the Department of Justice for purposes of this act.

(b) The Department of Justice may expend up to 5 percent of the amount appropriated in subdivision (a) for administrative purposes in connection with implementing the provisions of this act.

CHAPTER 567

An act to amend Sections 23373, 24045.7, 25000, 25000.6, 25502.1, 25503.8, 25503.16, 25503.24, 25503.26, and 25503.85 of, and to amend and repeal Section 25500.2 of, the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 23373 of the Business and Professions Code is amended to read:

23373. A California winegrower's agent's license authorizes any of the following:

(a) The possession of wine produced in California and brandy distilled in California in public or private warehouses.

(b) The sale to wholesalers for his or her own account or the solicitation of and sale to wholesalers for the account of a licensed winegrower of wine that was produced in this state and brandy that was distilled in this state.

(c) The invoicing and collection on behalf of a winegrower of payments for orders solicited by the agent.

(d) Performance or furnishing on behalf of the winegrower for which he or she is an agent, of the services which the winegrower is authorized to perform or furnish under the provisions of Sections 23356.1, 25503.1, 25503.2, 25503.3, 25503.5, 25503.8, 25503.9, 25503.26, and 25503.85.

SEC. 2. Section 24045.7 of the Business and Professions Code is amended to read:

24045.7. (a) (1) The department may issue a special on-sale general license to any nonprofit theater company that is exempt from the payment of income taxes under Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of the United States. Any special on-sale general license issued to a nonprofit theater company pursuant to this subdivision shall be for a single specified premises only.

(2) Theater companies holding a license under this subdivision may, subject to Section 25631, sell and serve alcoholic beverages to ticketholders only during, and two hours prior to and one hour after, a bona fide theater performance of the company.

(3) Notwithstanding any other provision in this division, a licensed manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, employee, or agent of that person, may serve on the board of trustees of a nonprofit theater company operating a theater in Napa County licensed pursuant to this subdivision.

(4) An applicant for such a license shall accompany the application with an original issuance fee of one thousand dollars ($1,000) and shall pay an annual renewal fee as provided in Section 23320.

(5) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exceptions established by this subdivision to the general prohibition against tied interests must be limited to their express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

(b) (1) The department may issue a special on-sale beer and wine license to any nonprofit theater company which has been in existence for at least eight years, which for at least six years has performed in facilities leased or rented from a local county fair association, and which is exempt from the payment of income taxes under Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of the United States.

(2) Theater companies holding a license under this subdivision may, subject to Section 25631, sell and serve beer and wine to ticketholders only during, and two hours prior to, a bona fide theater performance of the company. Beer and wine may be sold from an open-air concession stand which is not attached to the theater building itself, if the concession stand is located on fair association property within 30 feet of the theater building and the alcoholic beverages sold are consumed only in the theater building itself, or within a designated outdoor area in front of and between the concession stand and the main public entrance to the theater building. Nothing in this section permits a theater company to sell beer or wine during the run of a county fair.

(3) An applicant for a license under this subdivision shall accompany the application with an original issuance fee equal to the annual renewal fee and shall pay an annual renewal fee as provided in Section 23320.

SEC. 3. Section 25000 of the Business and Professions Code is amended to read:

25000. (a) Each manufacturer, importer, and wholesaler of beer shall file and thereafter maintain on file with the department, in such form as the department may provide, a written schedule of selling prices charged by the licensee for beer sold and distributed by the licensee to customers in California, except that the transfer, including the sale, of beer between wholesalers who sell the same brand in package is permitted without filing the schedule of selling prices, and the transfer, including the sale, of beer made under contract from a contract beer manufacturer making the beer to a beer manufacturer receiving the beer is permitted without filing the schedule of selling prices. All prices filed shall be for immediate delivery. Each manufacturer, importer, and wholesaler of beer shall file a price schedule for each county in which his or her customers have their premises, whether the price that is posted is f.o.b. or delivered, or both. Different prices for different trading areas within a county shall be based upon natural geographical differences justifying the different prices, and shall not be established for special customers. This section shall not affect or alter any provisions of law concerning quantity discounts on beer.

(b) For purposes of this section, a ''contract beer manufacturer'' is a beer manufacturer that does all of the following:

(1) Makes beer pursuant to a written contract with another beer manufacturer, and neither entity has a controlling interest in the other entity.

(2) Makes beer in accordance with a recipe that is a trade secret of the beer manufacturer having its beer made under contract.

(3) Has no right to sell the beer to any other beer manufacturer, importer, or wholesaler other than the beer manufacturer who contracted for the beer.

(c) For purposes of this section, ''beer manufacturer'' includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

SEC. 4. Section 25000.6 of the Business and Professions Code is amended to read:

25000.6. (a) A provision in an agreement between a beer manufacturer and a beer wholesaler for the sale and distribution of beer in this state, which restricts venue to a forum outside this state, is void with respect to any claim arising under or relating to the agreement involving a beer wholesaler operating within this state.

(b) This section shall apply to any transaction or conduct pursuant to an agreement described in subdivision (a) on or after the effective date of this section.

(c) For purposes of the section, ''beer manufacturer'' includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

SEC. 5. Section 25500.2 of the Business and Professions Code, as added by Section 1 of Chapter 980 of the Statutes of 2000, is amended to read:

25500.2. (a) Notwithstanding Section 25500, the listing of the names, addresses, telephone numbers, e-mail addresses, or Web site addresses, of two or more unaffiliated on-sale retailers selling beer, wine, or distilled spirits, and operating and licensed as bona fide public eating places pursuant to Section 23038 selling the beer, wine, or distilled spirits produced, distributed, or imported by a nonretail industry member in response to a direct inquiry from a consumer received by telephone, by mail, by electronic Internet inquiry, or in person does not constitute a thing of value or prohibited inducement to the listed on-sale retailer, provided all of the following conditions are met:

(1) The listing does not also contain the retail price of the product.

(2) The listing is the only reference to the on-sale retailers in the direct communication.

(3) The listing does not refer only to one on-sale retailer or only to on-sale retail establishments controlled directly or indirectly by the same on-sale retailer.

(4) The listing is made by, or produced by, or paid for, exclusively by the nonretail industry member making the response.

(b) For the purposes of this section, ''nonretail industry member'' is defined as a manufacturer, including, but not limited to, a beer manufacturer, winegrower, or distiller of alcoholic beverages or an agent of that entity, or a wholesaler, regardless of any other licenses held directly or indirectly by that person.

SEC. 6. Section 25500.2 of the Business and Professions Code, as added by Section 6 of Chapter 979 of the Statutes of 2000, is repealed.

SEC. 7. Section 25502.1 of the Business and Professions Code is amended to read:

25502.1. (a) Notwithstanding Section 25502, the listing of the names, addresses, telephone numbers, e-mail addresses, or Web site addresses, of two or more unaffiliated off-sale retailers selling the products produced, distributed or imported by a nonretail industry member in response to a direct inquiry from a consumer received by telephone, by mail, by electronic Internet inquiry or in person does not constitute a thing of value or prohibited inducement to the listed off-sale retailer, provided all of the following conditions are met:

(1) The listing does not also contain the retail price of the product.

(2) The listing is the only reference to the off-sale retailers in the direct communication.

(3) The listing does not refer only to one off-sale retailer or only to off-sale retail establishments controlled directly or indirectly by the same off-sale retailer.

(4) The listing is made by, or produced by, or paid for, exclusively by the nonretail industry member making the response.

(b) For the purposes of this section, ''nonretail industry member'' is defined as a manufacturer, including, but not limited to, a beer manufacturer, winegrower, or distiller of alcoholic beverages, or an agent of those entities, or a wholesaler, regardless of any other licenses held directly or indirectly by that person.

SEC. 8. Section 25503.8 of the Business and Professions Code is amended to read:

25503.8. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, a California winegrower's agent, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent may purchase advertising space and time from, or on behalf of, an on-sale retail licensee if all of the following conditions are met:

(1) The on-sale licensee is the owner of any of the following:

(A) A fully enclosed auditorium or theater with a fixed seating capacity in excess of 6,000 seats, at least 60 percent of the use of which is for plays or musical concerts, not including sporting events.

(B) A motion picture studio facility at which public tours are conducted for at least four million people per year.

(C) A retail, entertainment development adjacent to, and under common ownership with, a theme park, amphitheater, and motion picture production studio.

(D) A theme or amusement park and the adjacent retail, dining, and entertainment area located in the City of Los Angeles, Los Angeles County, or Orange County.

(2) The advertising space or time is purchased only in connection with one of the following:

(A) In the case of a fully enclosed auditorium or theater, in connection with sponsorship of plays or musical concerts to be held on the premises of the auditorium or theater owned by the on-sale licensee.

(B) In the case of a motion picture studio facility, in connection with sponsorship of the public tours or special events conducted at the studio facility.

(C) In the case of a retail, entertainment development, in connection with sponsorship of public tours or special events conducted at the development.

(D) In the case of a theme or amusement park and the adjacent retail, dining, and entertainment area, located in the City of Los Angeles, Los Angeles County, or Orange County, in connection with daily activities and events at the theme or amusement park and the adjacent retail, dining, and entertainment area.

(3) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced or marketed by the winegrower or California winegrower's agent, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits manufacturer or distilled spirits manufacturer's agent purchasing the advertising space or time.

(b) Any purchase of advertising space or time conducted pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer, the holder of the winegrower's license, the California winegrower's agent, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent, and the on-sale licensee, which contract shall not in any way involve the holder of a wholesaler's license.

(c) Any beer manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent, holder of a winegrower's license, or

California winegrower's agent, who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who solicits or coerces, directly or indirectly, a holder of a wholesaler's license to solicit a beer manufacturer, distilled spirits manufacturer, or distilled spirits manufacturer's agent, holder of a winegrower's license, or California winegrower's agent to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(e) For the purposes of this section, ''beer manufacturer'' includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

SEC. 9. Section 25503.16 of the Business and Professions Code is amended to read:

25503.16. (a) Nothing in this division shall prohibit the issuance or transfer of any retail on-sale or off-sale license to any person with respect to premises which are an integral part of the operations of a hotel, motel, or marine park owned by, or operated by or on behalf of, the licensee notwithstanding that a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler has any interest, directly or indirectly, in the premises, in the retail license, or in the retail licensee, and notwithstanding that the issuance or transfer would otherwise result in a violation of subdivision (a) of Section 25500, subdivision (a) or (b) of Section 25501, or Section 25502, if each of the following conditions is met:

(1) In the case of a hotel or motel, the hotel or motel consists of not less than 100 guestroom accommodations.

(2) No more than one-quarter of the total gross annual revenues of the hotel, motel, or marine park is derived from the sale by the hotel, motel, or marine park of alcoholic beverages.

(3) (A) The retail licensee shall purchase no beer or distilled spirits for sale in this state other than from a wholesale licensee, and the retail licensee, except as otherwise provided in subparagraph (B), shall purchase no alcoholic beverages for sale in this state from any wholesale licensee that has any interest, directly or indirectly, in the premises, in the retail license, or in the retail licensee.

(B) Notwithstanding subparagraph (A), a marine park may purchase beer or malt beverages for sale in this state from a wholesale licensee regardless of whether the wholesale licensee has any interest, directly or indirectly, in the premises, in the retail license, or in the retail licensee.

(4) The retail licensee serves other brands of beer, wine, and distilled spirits in addition to the brands manufactured by the beer or distilled spirits manufacturer or produced by the winegrower holding an interest in the retail license.

(5) No marine park shall sell or offer for sale any distilled spirits, except during private events or private functions held at the marine park.

(b) For purposes of this section, ''hotel'' and ''motel'' shall mean an establishment containing guestroom accommodations with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest; for purposes of this subdivision, the existence of other legal relationships as between some occupants and the owner or operator thereof shall be immaterial.

(c) For purposes of this section, ''marine park'' means an establishment with not less than 125 contiguous acres, located in San Diego County, the predominant purpose of which is the education or entertainment of the public through the display of marine animals and related aquatic, food service, and amusement activities, which holds permits issued by state and federal regulatory agencies authorizing the keeping of marine animals or endangered species or both, and which has an annual paid attendance of at least 2,000,000 people.

(d) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests shall be limited to its express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

SEC. 10. Section 25503.24 of the Business and Professions Code is amended to read:

25503.24. (a) Notwithstanding any other provision of this chapter, any manufacturer, winegrower, rectifier, distiller, distilled spirits wholesaler, or any officer, director, agent, or representative of any of those entities, may conduct market research and, in connection with that research, the entity conducting the market research may purchase from licensed off-sale retailers data regarding purchases and sales of alcoholic beverage products at the customary rates that those retailers sell similar data for nonalcoholic beverage products subject to the following limitations:

(1) No licensed retailer shall be obligated to purchase or sell the alcoholic beverage products of that manufacturer, winegrower, rectifier, or distiller.

(2) No retail premises shall participate in more than one research project conducted by any single manufacturer, winegrower, rectifier, distiller, or distilled spirits wholesaler during a calendar year. A research project may involve multiple onsite surveys.

(3) Nothing in this section shall allow a licensed retailer to require a manufacturer, winegrower, rectifier, distiller, or distilled spirits wholesaler to conduct any market research as a condition for selling alcoholic beverage products to that licensed retailer.

(b) Any holder of a beer manufacturer's license or winegrower's license who, through coercion or other illegal means, induces, directly or indirectly, a holder of a beer or wine wholesaler's license to fulfill obligations entered into pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the market research or time involved in the project, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(c) Any retail licensee who, directly or indirectly, solicits or coerces a holder of a beer or wine wholesaler's license to solicit a beer manufacturer, or holder of a winegrower's license to fulfill obligations entered into pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the market research or time involved in the project, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) For the purposes of this section, ''beer manufacturer'' includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

SEC. 11. Section 25503.26 of the Business and Professions Code is amended to read:

25503.26. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, a California winegrower's agent, a manufacturer of distilled spirits, or distilled spirits manufacturer's agent, may purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(1) The on-sale licensee is the owner, or is the lessee, or is a wholly owned subsidiary of the lessee, of an arena with a fixed seating capacity in excess of 10,000 seats, at least 60 percent of the use of which is for horseracing events, and which is located within Los Angeles County, Alameda County, or San Mateo County.

(2) The advertising space or time is purchased only in connection with events to be held on the premises of the arena owned or leased by the on-sale licensee.

(3) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced or marketed by the winegrower or California winegrower's agent and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits manufacturer or distilled spirits manufacturer's agent purchasing the advertising space or time.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer, the holder of the winegrower's license, the California winegrower's agent, the manufacturer of distilled spirits, or distilled spirits manufacturer's agent, and the on-sale licensee.

(c) Any beer manufacturer, holder of a winegrower's license, California winegrower's agent, manufacturer of distilled spirits, or the distilled spirits manufacturer's agent, who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill the contractual obligations entered into pursuant to subdivision (a) or (b) is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale licensee who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, a holder of a winegrower's license, a California winegrower's agent, a

distilled spirits manufacturer, or a distilled spirits manufacturer's agent, to purchase advertising space or time shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(e) For the purposes of this section, ''beer manufacturer'' includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

SEC. 12. Section 25503.85 of the Business and Professions Code is amended to read:

25503.85. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent, holder of a winegrower's license, or California winegrower's agent may purchase advertising space and time from, or on behalf of, an on-sale retail licensee, that shall be limited to small notices, plaques, or signs that portray partial or full sponsorship or funding of educational programs, special fundraising and promotional events, improvements in capital projects, and the development of exhibits or facilities, if all of the following conditions are met:

(1) The on-sale licensee is a zoo or aquarium operated by a nonprofit organization that is accredited by the American Association of Zoological Parks and Aquariums.

(2) The advertising space or time is purchased only in connection with the sponsorship of activities that are held on the premises or grounds owned, leased, or controlled by the on-sale licensee.

(3) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced or marketed by the winegrower or California winegrower's agent, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits manufacturer or distilled spirits manufacturer's agent purchasing the advertising space or time.

(b) Nothing in this section shall be construed to permit the purchase of billboards or bench advertisements as ''advertising space.''

(c) Any purchase of advertising space or time pursuant to subdivision (a) shall be accomplished by a written contract entered into by the beer manufacturer, the distilled spirits manufacturer, the distilled spirits manufacturer's agent, a holder of the winegrower's license, or the

California winegrower's agent, and the on-sale licensee. That contract shall not in any way involve the holder of a wholesaler's license.

(d) Any beer manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent, holder of a winegrower's license, or California winegrower's agent who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) or (c) is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(e) Any on-sale licensee who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent, holder of a winegrower's license, or a California winegrower's agent to purchase advertising space or time shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(f) For the purposes of this section, ''beer manufacturer'' includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

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.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid the loss of revenue to governmental agencies from the sale and advertising of alcoholic beverages, and to conform various

provisions of the Alcoholic Beverage Control Act, it is necessary that this act take effect immediately.

CHAPTER 568

An act to amend Section 1203.097 of the Penal Code, relating to batterer's treatment programs.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 1203.097 of the Penal Code is amended to read:

1203.097. (a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following:

(1) A minimum period of probation of 36 months, which may include a period of summary probation as appropriate.

(2) A criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions.

(3) Notice to the victim of the disposition of the case.

(4) Booking the defendant within one week of sentencing if the defendant has not already been booked.

(5) A minimum payment by the defendant of two hundred dollars ($200) to be disbursed as specified in this paragraph. If, after a hearing in court on the record, the court finds that the defendant does not have the ability to pay, the court may reduce or waive this fee.

One-third of the moneys deposited with the county treasurer pursuant to this section shall be retained by counties and deposited in the domestic violence programs special fund created pursuant to Section 18305 of the Welfare and Institutions Code, to be expended for the purposes of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. The remainder shall be transferred, once a month, to the Controller for deposit in equal amounts in the Domestic Violence Restraining Order Reimbursement Fund and in the Domestic Violence Training and Education Fund, which are hereby created, in an amount equal to two-thirds of funds collected during the preceding month. Moneys deposited into these funds pursuant to this

section shall be available upon appropriation by the Legislature and shall be distributed each fiscal year as follows:

(A) Funds from the Domestic Violence Restraining Order Reimbursement Fund shall be distributed to local law enforcement or other criminal justice agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, based on the annual notification from the Department of Justice of the number of restraining orders issued and registered in the state domestic violence restraining order registry maintained by the Department of Justice, for the development and maintenance of the domestic violence restraining order data bank system.

(B) Funds from the Domestic Violence Training and Education Fund shall support a statewide training and education program to increase public awareness of domestic violence and to improve the scope and quality of services provided to the victims of domestic violence. Grants to support this program shall be awarded on a competitive basis and be administered by the State Department of Health Services, in consultation with the statewide domestic violence coalition, which is eligible to receive funding under this section.

(6) Successful completion of a batterer's program, as defined in subdivision (c), or if none is available, another appropriate counseling program designated by the court, for a period not less than one year with periodic progress reports by the program to the court every three months or less and weekly sessions of a minimum of two hours class time duration. The defendant shall attend consecutive weekly sessions, unless granted an excused absence for good cause by the program for no more than three individual sessions during the entire program, and shall complete the program within 18 months, unless, after a hearing, the court finds good cause to modify the requirements of consecutive attendance or completion within 18 months.

(7) (A) (i) The court shall order the defendant to comply with all probation requirements, including the requirements to attend counseling, keep all program appointments, and pay program fees based upon the ability to pay.

(ii) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(B) Upon request by the batterer's program, the court shall provide the defendant's arrest report, prior incidents of violence, and treatment history to the program.

(8) The court also shall order the defendant to perform a specified amount of appropriate community service, as designated by the court. The defendant shall present the court with proof of completion of community service and the court shall determine if the community service has been satisfactorily completed. If sufficient staff and resources are available, the community service shall be performed under the jurisdiction of the local agency overseeing a community service program.

(9) If the program finds that the defendant is unsuitable, the program shall immediately contact the probation department or the court. The probation department or court shall either recalendar the case for hearing or refer the defendant to an appropriate alternative batterer's program.

(10) (A) Upon recommendation of the program, a court shall require a defendant to participate in additional sessions throughout the probationary period, unless it finds that it is not in the interests of justice to do so, states its reasons on the record, and enters them into the minutes. In deciding whether the defendant would benefit from more sessions, the court shall consider whether any of the following conditions exist:

(i) The defendant has been violence free for a minimum of six months.

(ii) The defendant has cooperated and participated in the batterer's program.

(iii) The defendant demonstrates an understanding of and practices positive conflict resolution skills.

(iv) The defendant blames, degrades, or has committed acts that dehumanize the victim or puts at risk the victim's safety, including, but not limited to, molesting, stalking, striking, attacking, threatening, sexually assaulting, or battering the victim.

(v) The defendant demonstrates an understanding that the use of coercion or violent behavior to maintain dominance is unacceptable in an intimate relationship.

(vi) The defendant has made threats to harm anyone in any manner.

(vii) The defendant has complied with applicable requirements under paragraph (6) of subdivision (c) or subparagraph (C) to receive alcohol counseling, drug counseling, or both.

(viii) The defendant demonstrates acceptance of responsibility for the abusive behavior perpetrated against the victim.

(B) The program shall immediately report any violation of the terms of the protective order, including any new acts of violence or failure to comply with the program requirements, to the court, the prosecutor, and, if formal probation has been ordered, to the probation department. The probationer shall file proof of enrollment in a batterer's program with the court within 30 days of conviction.

(C) Concurrent with other requirements under this section, in addition to, and not in lieu of, the batterer's program, and unless prohibited by the referring court, the probation department or the court may make provisions for a defendant to use his or her resources to enroll in a chemical dependency program or to enter voluntarily a licensed chemical dependency recovery hospital or residential treatment program that has a valid license issued by the state to provide alcohol or drug services to receive program participation credit, as determined by the court. The probation department shall document evidence of this hospital or residential treatment participation in the defendant's program file.

(11) The conditions of probation may include, in lieu of a fine, but not in lieu of the fund payment required under paragraph (5), one or more of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, to make payments to a battered women's shelter, or to pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. Determination of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. When the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, as required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse, until all separate property of the offending spouse is exhausted.

(12) If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, is not benefiting from counseling, or has engaged in criminal conduct, upon request of the probation officer, the prosecuting attorney, or on its own motion, the court, as a priority calendar item, shall hold a hearing to determine whether further sentencing should proceed. The court may consider factors, including, but not limited to, any violence by the defendant against the former or a new victim while on probation and noncompliance with any other

specific condition of probation. If the court finds that the defendant is not performing satisfactorily in the assigned program, is not benefiting from the program, has not complied with a condition of probation, or has engaged in criminal conduct, the court shall terminate the defendant's participation in the program and shall proceed with further sentencing.

(b) If a person is granted formal probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, in addition to the terms specified in subdivision (a), all of the following shall apply:

(1) The probation department shall make an investigation and take into consideration the defendant's age, medical history, employment and service records, educational background, community and family ties, prior incidents of violence, police report, treatment history, if any, demonstrable motivation, and other mitigating factors in determining which batterer's program would be appropriate for the defendant. This information shall be provided to the batterer's program if it is requested. The probation department shall also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendations to the court.

(2) The court shall advise the defendant that the failure to report to the probation department for the initial investigation, as directed by the court, or the failure to enroll in a specified program, as directed by the court or the probation department, shall result in possible further incarceration. The court, in the interests of justice, may relieve the defendant from the prohibition set forth in this subdivision based upon the defendant's mistake or excusable neglect. Application for this relief shall be filed within 20 court days of the missed deadline. This time limitation may not be extended. A copy of any application for relief shall be served on the office of the prosecuting attorney.

(3) After the court orders the defendant to a batterer's program, the probation department shall conduct an initial assessment of the defendant, including, but not limited to, all of the following:

(A) Social, economic, and family background.

(B) Education.

(C) Vocational achievements.

(D) Criminal history.

(E) Medical history.

(F) Substance abuse history.

(G) Consultation with the probation officer.

(H) Verbal consultation with the victim, only if the victim desires to participate.

(I) Assessment of the future probability of the defendant committing murder.

(4) The probation department shall attempt to notify the victim regarding the requirements for the defendant's participation in the batterer's program, as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(c) The court or the probation department shall refer defendants only to batterer's programs that follow standards outlined in paragraph (1), which may include, but are not limited to, lectures, classes, group discussions, and counseling. The probation department shall design and implement an approval and renewal process for batterer's programs and shall solicit input from criminal justice agencies and domestic violence victim advocacy programs.

(1) The goal of a batterer's program under this section shall be to stop domestic violence. A batterer's program shall consist of the following components:

(A) Strategies to hold the defendant accountable for the violence in a relationship, including, but not limited to, providing the defendant with a written statement that the defendant shall be held accountable for acts or threats of domestic violence.

(B) A requirement that the defendant participate in ongoing same-gender group sessions.

(C) An initial intake that provides written definitions to the defendant of physical, emotional, sexual, economic, and verbal abuse, and the techniques for stopping these types of abuse.

(D) Procedures to inform the victim regarding the requirements for the defendant's participation in the intervention program as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(E) A requirement that the defendant attend group sessions free of chemical influence.

(F) Educational programming that examines, at a minimum, gender roles, socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others.

(G) A requirement that excludes any couple counseling or family counseling, or both.

(H) Procedures that give the program the right to assess whether or not the defendant would benefit from the program and to refuse to enroll the defendant if it is determined that the defendant would not benefit from the program, so long as the refusal is not because of the defendant's inability to pay. If possible, the program shall suggest an appropriate alternative program.

(I) Program staff who, to the extent possible, have specific knowledge regarding, but not limited to, spousal abuse, child abuse,

sexual abuse, substance abuse, the dynamics of violence and abuse, the law, and procedures of the legal system.

(J) Program staff who are encouraged to utilize the expertise, training, and assistance of local domestic violence centers.

(K) A requirement that the defendant enter into a written agreement with the program, which shall include an outline of the contents of the program, the attendance requirements, the requirement to attend group sessions free of chemical influence, and a statement that the defendant may be removed from the program if it is determined that the defendant is not benefiting from the program or is disruptive to the program.

(L) A requirement that the defendant sign a confidentiality statement prohibiting disclosure of any information obtained through participating in the program or during group sessions regarding other participants in the program.

(M) Program content that provides cultural and ethnic sensitivity.

(N) A requirement of a written referral from the court or probation department prior to permitting the defendant to enroll in the program. The written referral shall state the number of minimum sessions required by the court.

(O) Procedures for submitting to the probation department all of the following uniform written responses:

(i) Proof of enrollment, to be submitted to the court and the probation department and to include the fee determined to be charged to the defendant, based upon the ability to pay, for each session.

(ii) Periodic progress reports that include attendance, fee payment history, and program compliance.

(iii) Final evaluation that includes the program's evaluation of the defendant's progress, using the criteria set forth in paragraph (4) of subdivision (a) and recommendation for either successful or unsuccessful termination or continuation in the program.

(P) A sliding fee schedule based on the defendant's ability to pay. The batterer's program shall develop and utilize a sliding fee scale that recognizes both the defendant's ability to pay and the necessity of programs to meet overhead expenses. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee, if the defendant has the ability to pay the nominal fee. Upon a hearing and a finding by the court that the defendant does not have the financial ability to pay the nominal fee, the court shall waive this fee. The payment of the fee shall be made a condition of probation if the court determines the defendant has the present ability to pay the fee. The fee shall be paid during the term of probation unless the program sets other conditions. The acceptance policies shall be in accordance with the scaled fee system.

(2) The court shall refer persons only to batterer's programs that have been approved by the probation department pursuant to paragraph (5). The probation department shall do both of the following:

(A) Provide for the issuance of a provisional approval, provided that the applicant is in substantial compliance with applicable laws and regulations and an urgent need for approval exists. A provisional approval shall be considered an authorization to provide services and shall not be considered a vested right.

(B) If the probation department determines that a program is not in compliance with standards set by the department, the department shall provide written notice of the noncompliant areas to the program. The program shall submit a written plan of corrections within 14 days from the date of the written notice on noncompliance. A plan of correction shall include, but not be limited to, a description of each corrective action and timeframe for implementation. The department shall review and approve all or any part of the plan of correction and notify the program of approval or disapproval in writing. If the program fails to submit a plan of correction or fails to implement the approved plan of correction, the department shall consider whether to revoke or suspend approval and, upon revoking or suspending approval, shall have the option to cease referrals of defendants under this section.

(3) No program, regardless of its source of funding, shall be approved unless it meets all of the following standards:

(A) The establishment of guidelines and criteria for education services, including standards of services that may include lectures, classes, and group discussions.

(B) Supervision of the defendant for the purpose of evaluating the person's progress in the program.

(C) Adequate reporting requirements to ensure that all persons who, after being ordered to attend and complete a program, may be identified for either failure to enroll in, or failure to successfully complete, the program or for the successful completion of the program as ordered. The program shall notify the court and the probation department in writing within the period of time and in the manner specified by the court of any person who fails to complete the program. Notification shall be given if the program determines that the defendant is performing unsatisfactorily or if the defendant is not benefiting from the education, treatment, or counseling.

(D) No victim shall be compelled to participate in a program or counseling, and no program may condition a defendant's enrollment on participation by the victim.

(4) In making referrals of indigent defendants to approved batterer's programs, the probation department shall apportion these referrals evenly among the approved programs.

(5) The probation department shall have the sole authority to approve a batterer's program for probation. The program shall be required to obtain only one approval but shall renew that approval annually.

(A) The procedure for the approval of a new or existing program shall include all of the following:

(i) The completion of a written application containing necessary and pertinent information describing the applicant program.

(ii) The demonstration by the program that it possesses adequate administrative and operational capability to operate a batterer's treatment program. The program shall provide documentation to prove that the program has conducted batterer's programs for at least one year prior to application. This requirement may be waived under subparagraph (A) of paragraph (2) if there is no existing batterer's program in the city, county, or city and county.

(iii) The onsite review of the program, including monitoring of a session to determine that the program adheres to applicable statutes and regulations.

(iv) The payment of the approval fee.

(B) The probation department shall fix a fee for approval not to exceed two hundred fifty dollars ($250) and for approval renewal not to exceed two hundred fifty dollars ($250) every year in an amount sufficient to cover its cost in administering the approval process under this section. No fee shall be charged for the approval of local governmental entities.

(C) The probation department has the sole authority to approve the issuance, denial, suspension, or revocation of approval and to cease new enrollments or referrals to a batterer's program under this section. The probation department shall review information relative to a program's performance or failure to adhere to standards, or both. The probation department may suspend or revoke any approval issued under this subdivision or deny an application to renew an approval or to modify the terms and conditions of approval, based on grounds established by probation, including, but not limited to, either of the following:

(i) Violation of this section by any person holding approval or by a program employee in a program under this section.

(ii) Misrepresentation of any material fact in obtaining the approval.

(6) For defendants who are chronic users or serious abusers of drugs or alcohol, standard components in the program shall include concurrent counseling for substance abuse and violent behavior, and in appropriate cases, detoxification and abstinence from the abused substance.

(7) The program shall conduct an exit conference that assesses the defendant's progress during his or her participation in the batterer's program.

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.

CHAPTER 569

An act to amend Sections 94100, 94110, 94123, 94140, 94144, 94146, 94147, 94154, 94190, 94191, 94192, 94193, and 94195 of the Education Code, relating to higher education housing, and making an appropriation therefor.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 94100 of the Education Code is amended to read:

94100. It is the purpose of this chapter to accomplish all of the following:

(a) To give this and future generations of youth the fullest opportunity to learn and develop their intellectual and mental capacities by providing private institutions of higher education within the state with an additional means by which to expand, enlarge, and establish dormitory, academic, and related facilities, to finance those facilities, and to refinance existing facilities.

(b) To provide private and public institutions of higher education within the state with an additional means to assist students in financing their costs of attendance.

(c) To develop student, faculty, and staff housing on or near public and participating private institutions of higher education through the use of agreements with participating nonprofit entities.

SEC. 1.5. Section 94100 of the Education Code is amended to read:

94100. It is the purpose of this chapter to accomplish all of the following:

(a) To give this and future generations of youth the fullest opportunity to learn and develop their intellectual and mental capacities by providing private institutions of higher education within the state with an

additional means by which to expand, enlarge, and establish dormitory, academic, and related facilities, to finance those facilities, and to refinance existing facilities.

(b) To provide private and public institutions of higher education within the state with an additional means to assist students in financing their costs of attendance.

(c) To develop student, faculty, and staff housing on or near public and participating private institutions of higher education through the use of agreements with participating nonprofit entities.

(d) To make grants to private institutions of higher education to assist students in preparing for higher education and college entrance, pursuant to Article 9 (commencing with Section 94215).

SEC. 2. Section 94110 of the Education Code is amended to read:

94110. As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent:

(a) ''Authority'' means the California Educational Facilities Authority created by this chapter or any board, body, commission, department, or officer succeeding to the principal functions thereof or to whom the power conferred upon the authority by this chapter is given by law.

(b) ''Bond'' means bonds, notes, debentures, or other securities of the authority issued pursuant to this chapter.

(c) ''Cost,'' as applied to a project or portion thereof financed under this chapter, embraces all or any part of the cost of construction and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to, during, and for a period after completion of, the construction as determined by the authority, provisions for working capital, reserves for principal and interest and for extension, enlargements, additions, replacements, renovations and improvements, the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates, administrative expenses, and other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction or acquisition or financing thereof.

(d) ''Dormitory'' means a housing unit with necessary and usual attendant and related facilities and equipment.

(e) ''Educational facility'' means a structure suitable for use as a dormitory, dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, health care

facility (including for an institution of higher education that maintains and operates a school of medicine, structures or facilities providing or designed to provide services as a hospital or clinic, whether the hospital or clinic is operated directly by the institution of higher education or by a separate nonprofit corporation, the member or members of which consist of the educational institution or the members of its governing body), and parking, maintenance, storage, or utility facilities and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher education, and the necessary and usual attendant and related facilities and equipment, but shall not include any facility used or to be used for sectarian instruction or as a place for religious worship or any facility used or to be used primarily in connection with any part of the program of a school or department of divinity.

(f) ''Faculty and staff housing'' means a residential unit owned by a participating nonprofit entity for use by an individual holding a faculty appointment or a staff position at a public university, public college, or participating private college.

(g) ''Participating nonprofit entity'' means an entity within the meaning of paragraph (3) of subsection (c) of Section 501 of Title 26 of the United States Code that, pursuant to this chapter for the purpose of owning student, faculty, or staff housing, as approved by, and for participation with, the authority, undertakes the financing and construction or acquisition of student, faculty, or staff housing, on real property owned or leased by the entity, for the benefit of a public college, public university, or participating private college. The authority may determine any additional qualifications of a participating nonprofit entity through regulations or guidelines.

(b) ''Participating private college'' or ''participating college'' means a private college that neither restricts entry on racial or religious grounds nor requires all students gaining admission to receive instruction in the tenets of a particular faith, and that, pursuant to this chapter, participates with the authority in undertaking the financing and construction or acquisition of a project.

(i) ''Private college'' means an institution for higher education other than a public college, situated within the state and that, by virtue of law or charter, is a nonprofit private or independent degree-granting educational institution that is regionally accredited.

(j) ''Project,'' for purposes relating to a participating private college, means a dormitory or an educational facility, or any combination thereof, or any function concerning student loans, or interests therein, as determined by the authority. For a participating nonprofit entity, ''project'' means the construction or acquisition of student housing or faculty and staff housing. The authority, in consultation with the top

administrative officials and the participating nonprofit entity, shall develop and adopt regulations to ensure, to the greatest extent practicable, that each project involving a participating nonprofit entity is used to house students, faculty, or staff of the participating private college, public college, or public university. The student, faculty, or staff housing shall meet all of the following criteria:

(1) Upon completion or acquisition of the project, the project will be owned by a participating nonprofit entity and located on real property owned, or leased by, that entity.

(2) The top administrative official of the public university, public college, or participating private college that the project is intended to benefit, verifies the need for housing and financing assistance in a specific area pursuant to paragraph (4).

(3) The project is monitored on an annual basis by the authority to ensure that it meets the requirements of paragraph (5) and all other regulatory agreements entered into by the authority.

(4) The project is located within a five-mile radius of the boundary of a campus or satellite center of the public college, public university, or participating private college that the project is intended to benefit. The participating nonprofit entity may request approval from the top official of the institution for a project that is located outside the five-mile radius, provided that all of the following criteria are met:

(A) There are no available and feasible sites within the five-mile radius.

(B) The project is near a mass transit destination.

(C) The time required to commute from campus to the mass transit destination, as estimated by the top administrative official, typically does not exceed 30 minutes.

(5) (A) The project includes and maintains for 40 years a restriction to the grant deed on the real property on which the student or faculty and staff housing is to be located. The grant deed shall accomplish all of the following:

(i) Give the public college, public university, or participating private college that the project is intended to benefit the right, but not the obligation, to purchase the property at fair market value.

(ii) Ensure that students, faculty, or staff of the affected campus will have first right of refusal to all available units.

(iii) Require that, to the greatest extent feasible, at least 50 percent of student residents will meet the criteria for need-based financial assistance, as determined by the top administrative official of the affected campus.

(iv) Require that all contracts for construction and renovation of the proposed project shall be subject to, and comply with the provisions referenced in, Section 10128 of the Public Contract Code.

(B) For the purposes of this paragraph, the authority shall, through regulation or rule, define ''student'' and ''faculty,'' taking into consideration enrollment status requirements and employment status requirements. The definitions of ''student'' and ''faculty'' may be different for each participating campus.

(k) ''Public college'' means a community college.

(*l*) ''Public university'' means any campus of the University of California or the California State University, or the Hastings College of the Law.

(m) ''Student housing'' means a residential unit owned by a participating nonprofit entity, and located on real property owned by that entity, for use by an individual enrolled at a public college, public university, or participating private college.

(n) ''Student loan'' means any loan having terms and conditions acceptable to the authority that is made to finance or refinance the costs of attendance at any private college or a public college and that is approved by the authority, if the loan is originated pursuant to a program that is approved by the authority.

(o) ''Top administrative official'' means the chancellor in the case of a campus of the University of California, the dean in the case of the Hastings College of the Law, the trustees in the case of a campus of the California State University, the president in the case of a campus of the California Community Colleges, or the president or highest-ranking official in the case of a participating private college.

SEC. 2.5. Section 94110 of the Education Code is amended to read:

94110. As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent:

(a) ''Authority'' means the California Educational Facilities Authority created by this chapter or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the power conferred upon the authority by this chapter is given by law.

(b) ''Bond'' means bonds, notes, debentures, or other securities of the authority issued pursuant to this chapter.

(c) ''Cost,'' as applied to a project or portion thereof financed under this chapter, embraces all or any part of the cost of construction and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to, during, and for a period after completion of, the construction as determined by

the authority, provisions for working capital, reserves for principal and interest and for extension, enlargements, additions, replacements, renovations and improvements, the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates, administrative expenses and other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction or acquisition or financing thereof.

(d) ''Dormitory'' means a housing unit with necessary and usual attendant and related facilities and equipment.

(e) ''Educational facility'' means a structure suitable for use as a dormitory, dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, health care facility (including for an institution of higher education that maintains and operates a school of medicine, structures or facilities providing or designed to provide services as a hospital or clinic, whether the hospital or clinic is operated directly by the institution of higher education or by a separate nonprofit corporation, the member or members of which consist of the educational institution or the members of its governing body), faculty and staff housing, and parking, maintenance, storage or utility facilities and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher education, and the necessary and usual attendant and related facilities and equipment, but does not include any facility used or to be used for sectarian instruction or as a place for religious worship or any facility used or to be used primarily in connection with any part of the program of a school or department of divinity.

(f) ''Faculty and staff housing'' means a residential unit owned by a participating college or participating nonprofit entity for use by an individual holding a faculty appointment or a staff position at a public university, public college, or participating college.

(g) ''Participating nonprofit entity'' means an entity within the meaning of paragraph (3) of subsection (c) of Section 501 of Title 26 of the United States Code that, pursuant to this chapter for the purpose of owning student, faculty, or staff housing, as approved by, and for participation with, the authority, undertakes the financing and construction or acquisition of student, faculty, or staff housing, on real property owned or leased by the entity, for the benefit of a public college, public university, or participating private college. The authority may determine any additional qualifications of a participating nonprofit entity through regulations or guidelines.

(h) ''Participating private college'' or ''participating college'' means a private college that neither restricts entry on racial or religious grounds nor requires all students gaining admission to receive instruction in the

tenets of a particular faith, and that, pursuant to this chapter, participates with the authority in undertaking the financing and construction or acquisition of a project.

(i) ''Private college'' means an institution for higher education other than a public college, situated within the state and that, by virtue of law or charter, is a nonprofit educational institution that is regionally accredited and empowered to provide a program of education beyond the high school level.

(j) (1) ''Project'' means a dormitory or an educational facility, faculty and staff housing, or any combination thereof, or any function concerning student loans, or interests therein, as determined by the authority.

(2) For a participating nonprofit entity, ''project'' means the construction or acquisition of student housing or faculty and staff housing. The authority, in consultation with the top administrative officials and the participating nonprofit entity, shall develop and adopt regulations to ensure, to the greatest extent practicable, that each project involving a participating nonprofit entity is used to house students, faculty, or staff of the participating private college, public college, or public university. The student, faculty, or staff housing shall meet all of the following criteria:

(A) Upon completion or acquisition of the project, the project will be owned by a participating nonprofit entity and located on real property owned, or leased by, that entity.

(B) The top administrative official of the public university, public college, or participating private college that the project is intended to benefit, verifies the need for housing and financing assistance in a specific area pursuant to subparagraph (D).

(C) The project is monitored on an annual basis by the authority to ensure that it meets the requirements of subparagraph (E) and all other regulatory agreements entered into by the authority.

(D) The project is located within a five-mile radius of the boundary of a campus or satellite center of the public college, public university, or participating private college that the project is intended to benefit. The participating nonprofit entity may request approval from the top official of the institution for a project that is located outside the five-mile radius, provided that all of the following criteria are met:

(i) There are no available and feasible sites within the five-mile radius.

(ii) The project is near a mass transit destination.

(iii) The time required to commute from campus to the mass transit destination, as estimated by the top administrative official, typically does not exceed 30 minutes.

(E) (i) The project includes and maintains for 40 years a restriction to the grant deed on the real property on which the student or faculty and staff housing is to be located. The grant deed shall accomplish all of the following:

(I) Give the public college, public university, or participating private college that the project is intended to benefit the right, but not the obligation, to purchase the property at fair market value.

(II) Ensure that students, faculty, or staff of the affected campus will have first right of refusal to all available units.

(III) Require that, to the greatest extent feasible, at least 50 percent of student residents will meet the criteria for need-based financial assistance, as determined by the top administrative official of the affected campus.

(IV) Require that all contracts for construction and renovation of the proposed project shall be subject to, and comply with the provisions referenced in, Section 10128 of the Public Contract Code.

(ii) For the purposes of this subparagraph, the authority shall, through regulation or rule, define ''student'' and ''faculty,'' taking into consideration enrollment status requirements and employment status requirements. The definitions of ''student'' and ''faculty'' may be different for each participating campus.

(k) ''Public college'' means a community college.

(*l*) ''Public university'' means any campus of the University of California or the California State University, or the Hastings College of the Law.

(m) ''Student housing'' means a residential unit owned by a participating nonprofit entity, and located on real property owned by that entity, for use by an individual enrolled at a public college, public university, or participating private college.

(n) ''Student loan'' means any loan having terms and conditions acceptable to the authority that is made to finance or refinance the costs of attendance at any private college or public college and that is approved by the authority, if the loan is originated pursuant to a program that is approved by the authority.

(o) ''Top administrative official'' means the chancellor in the case of a campus of the University of California, the dean in the case of the Hastings College of the Law, the trustees in the case of a campus of the California State University, the president in the case of a campus of the California Community Colleges, or the president or highest-ranking official in the case of a participating private college.

SEC. 3. Section 94123 of the Education Code is amended to read:

94123. Notwithstanding any other provision of law neither of the following is a conflict of interest:

(a) Service by a trustee, director, officer, or employee of a participating private college, public college, or public university as a member of the authority, provided that the trustee, director, officer, or employee abstains from discussion, deliberation, action, and vote by the authority under this chapter with respect to the participating private college, public college, or public university for which that member is a trustee, director, officer, or employee.

(b) Affiliation of a member of the authority with a bank that serves the authority as bond trustee, depository of funds, or in any other financial, advisory, or fiduciary capacity.

SEC. 4. Section 94140 of the Education Code is amended to read:

94140. The authority shall have power to do all of the following:

(a) To adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) To adopt and have an official common seal and alter it at pleasure.

(c) To sue and be sued in its own name, and plead and be impleaded.

(d) To borrow money and to issue bonds and notes and other obligations of the authority and to provide for the rights of the holders thereof as provided in this chapter.

(e) To acquire, lease as lessee, hold, and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this chapter.

(f) To acquire in the name of the authority by purchase or otherwise, on the terms and conditions and in the manner as it deems proper, any land or interest therein and other property that it determines is reasonably necessary for any project, including any lands held by any county, municipality, or other governmental subdivision of the state; and to hold and use the same and to sell, convey, lease, or otherwise dispose of property so acquired, no longer necessary for the authority's purposes.

(g) To receive and accept, from any federal or other public agency or governmental entity, grants or loans for or in aid of the acquisition or construction of any project, and to receive and accept aid or contributions from any other source, of either money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which the grants, loans, and contributions may be made.

(h) To prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the construction and equipment of projects for participating colleges and participating nonprofit entities under this chapter, and from time to time to modify those plans, specifications, designs, or estimates.

(i) By contract or contracts or by its own employees to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip, projects for participating colleges and participating nonprofit entities.

(j) To employ consulting engineers, architects, accountants, construction and financial experts, superintendents, and other employees and agents that may be necessary in its judgment and to fix their compensation.

(k) To determine the location and character of any project to be undertaken pursuant to this chapter, and to construct, reconstruct, repair, lease, as lessee or lessor, the same; to enter into contracts for any or all of those purposes; and to designate a participating private college or participating nonprofit entity as its agent to determine the location and character of a project undertaken by the participating private college or participating nonprofit entity under this chapter and, as the agent of the authority, to construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the same, and, as agent of the authority, to enter into contracts for any and all of those purposes including contracts for the management and operation of the project.

(*l*) To establish rules and regulations for the use of a project or any portion thereof and to designate a participating private college or participating nonprofit entity as its agent to establish rules and regulations for the use of a project undertaken by the participating private college or participating nonprofit entity.

(m) Generally to fix and revise from time to time and to charge and collect rates, rents, fees, and other charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and to contract with holders of its bonds and with any other person, party, association, corporation, or other body, public or private, in respect thereof.

(n) To enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the authority or to carry out any power expressly given in this chapter.

(o) To invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in obligations that are authorized by law for the investment of trust funds in the custody of the Treasurer.

(p) To charge, and equitably apportion among participating private colleges and participating nonprofit entities, its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter.

(q) To finance, directly or through an intermediary, or purchase or take assignments of, or make commitments to finance, directly or through an intermediary, or purchase or to take assignments of, student loans, to contract in advance for those student loans, and to contract in advance for that financing, purchase, or assignment, and to pay any amounts payable in respect thereto. A student loan shall be eligible for

financing or purchase by the authority or for assignment hereunder regardless of the repayment status of the loan. Any pledge made to secure authority financing for student loan project purposes shall be valid and binding from the time the pledge is made. The revenues and receipts of property or interest in the property pledged and thereafter received by the authority, a participating college or public institution of higher education, a servicer, a trustee, or a custodian shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, participating college or public institution of higher education, servicer, trustee, or custodian irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(r) To hold or invest in student loans and to create pools of student loans and sell bonds bearing interest on a taxable or tax-exempt basis or other interests backed by the pools of student loans.

(s) To contract or otherwise provide for the distribution, processing, origination, purchase, sale, servicing, securing, and collection of student loans, the payment of fees, charges, and administrative expenses in connection therewith, and the funding of reserves required or provided for in any resolution authorizing, or trust agreement securing, authority financing for student loan purposes.

(t) Assist in providing support to participating colleges or participating nonprofit entities to enhance the market acceptance of potential bond issues by the authority, including securing probable or actual credit ratings from nationally recognized bond rating agencies, providing or obtaining liquidity or credit enhancement, providing or securing bond reserve funds, performing any other action deemed necessary by the authority, and incurring necessary expenses, payable from available authority funds, for any of these purposes.

SEC. 4.5. Section 94140 of the Education Code is amended to read:

94140. The authority shall have power to do all of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt and have an official common seal and alter it at pleasure.

(c) Sue and be sued in its own name, and plead and be impleaded.

(d) Borrow money and issue bonds and notes and other obligations of the authority and to provide for the rights of the holders thereof as provided in this chapter.

(e) Acquire, lease as lessee, hold, and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this chapter.

(f) Acquire, in the name of the authority by purchase or otherwise, on the terms and conditions and in the manner as it deems proper any land or interest therein and other property that it determines is reasonably necessary for any project, including any lands held by any county, municipality or other governmental subdivision of the state; and to hold and use the same and to sell, convey, lease or otherwise dispose of property so acquired, no longer necessary for the authority's purposes.

(g) Receive and accept, from any federal or other public agency or governmental entity, grants or loans for or in aid of the acquisition or construction of any project, and to receive and accept aid or contributions from any other source, of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which the grants, loans and contributions may be made.

(h) Prepare or cause to be prepared plans, specifications, designs and estimates of costs for the construction and equipment of projects for participating colleges and participating nonprofit entities under this chapter, and from time to time to modify those plans, specifications, designs or estimates.

(i) By contract or contracts, or by its own employees, construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip, projects for participating colleges and participating nonprofit entities.

(j) Employ consulting engineers, architects, accountants, construction and financial experts, superintendents, and other employees and agents that may be necessary in its judgment and to fix their compensation.

(k) Determine the location and character of any project to be undertaken pursuant to this chapter, and construct, reconstruct, repair, lease, as lessee or lessor, the same; enter into contracts for any or all of those purposes; and designate a participating college or participating nonprofit entity as its agent to determine the location and character of a project undertaken by the participating private college or participating nonprofit entity under this chapter and, as the agent of the authority, construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the same, and, as agent of the authority, enter into contracts for any and all of those purposes including contracts for the management and operation of the project.

(*l*) Establish rules and regulations for the use of a project or any portion thereof and to designate a participating private college or participating nonprofit entity as its agent to establish rules and regulations for the use of a project undertaken by the participating private college or participating nonprofit entity.

(m) Generally establish, revise from time to time, and charge and collect rates, rents, fees and other charges for the use of and for the services furnished or to be furnished by a project or any portion thereof

and contract with holders of its bonds and with any other person, party, association, corporation or other body, public or private, in respect thereof.

(n) Enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the authority or to carry out any power expressly given in this chapter.

(o) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in obligations that are authorized by law for the investment of trust funds in the custody of the Treasurer.

(p) Charge, and equitably apportion among participating private colleges and participating nonprofit entities, its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter.

(q) Finance, directly or through an intermediary, or purchase or take assignments of, or make commitments to finance, directly or through an intermediary, or purchase or take assignments of, student loans, contract in advance for those student loans, and contract in advance for that financing, purchase, or assignment, and pay any amounts payable in respect thereto. A student loan shall be eligible for financing or purchase by the authority or for assignment hereunder regardless of the repayment status of the loan. Any pledge made to secure authority financing for student loan project purposes shall be valid and binding from the time the pledge is made. The revenues and receipts of property or interest in the property pledged and thereafter received by the authority, a participating college or public institution of higher education, a servicer, a trustee, or a custodian shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, participating college or public institution of higher education, servicer, trustee, or custodian irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(r) Hold or invest in student loans and to create pools of student loans and sell bonds bearing interest on a taxable or tax-exempt basis or other interests backed by the pools of student loans.

(s) Contract or otherwise provide for the distribution, processing, origination, purchase, sale, servicing, securing, and collection of student loans, the payment of fees, charges, and administrative expenses in connection therewith, and the funding of reserves required or provided for in any resolution authorizing, or trust agreement securing, authority financing for student loan purposes.

(t) Assist in providing support to participating colleges or participating nonprofit entities to enhance the market acceptance of potential bond issues by the authority, including securing probable or actual credit ratings from nationally recognized bond rating agencies, providing or obtaining liquidity or credit enhancement, providing or securing bond reserve funds, performing any other action deemed necessary by the authority, and incurring necessary expenses, payable from available authority funds, for any of these purposes.

SEC. 5. Section 94144 of the Education Code is amended to read:

94144. (a) The authority is authorized from time to time to issue its negotiable bonds for any corporate purpose. In anticipation of the sale of those bonds, the authority may issue negotiable bond anticipation notes and may renew the same from time to time. The notes shall be paid from any revenues of the authority or other moneys available therefor and not otherwise pledged, or from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. The notes shall be issued in the same manner as the bonds. The notes and the resolution or resolutions authorizing the same may contain any provisions, conditions, or limitations which a bond resolution of the authority may contain.

(b) Except as may otherwise be expressly provided by the authority, every issue of its bonds or notes shall be general obligations of the authority payable from any revenues or moneys of the authority available therefor and not otherwise pledged, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or moneys and subject to any agreements with any participating institution. Notwithstanding that those bonds or notes may be payable from a special fund, they shall be and be deemed to be for all purposes negotiable instruments, subject only to the provisions of those bonds or notes for registration.

(c) (1) The bonds may be issued as serial bonds or as term bonds, or the authority, in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the authority, and shall bear the date or dates, mature at a time or times, not exceeding 50 years from their respective dates, bear interest at the rate or rates, be payable at the time or times, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in lawful money of the United States of America at a place or places, and be subject to the terms of redemption that the resolution or resolutions may provide. The bonds or notes may be sold by the State Treasurer at public sale, or the authority, after giving due consideration to the recommendations of the participating institution or participating nonprofit entity, may direct the State Treasurer to sell the bonds or notes at private sale.

(2) In the case of public sale, both of the following shall occur:

(A) The bonds specified in the resolution shall be sold by the State Treasurer, at a time fixed by him or her, and upon notice that he or she may deem advisable, or at the time to which the sale shall have been continued, at public sale, upon sealed bids, to the bidder whose bid will result in the lowest net interest cost on account of the bonds.

(B) If no bids are received, or if the State Treasurer determines that the bids are not satisfactory, the State Treasurer may reject all bids received, if any, and either readvertise or sell the bonds at private sale.

(3) Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates that shall be exchanged for the definitive bonds.

(d) Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to all of the following:

(1) Pledging the full faith and credit of the authority or pledging all or any part of the revenues of a project or any revenue-producing contract or contracts made by the authority with any individual, partnership, corporation, or association or other body, public or private, to secure the payment of the bonds or of any particular issue of bonds, subject to those agreements with bondholders that may then exist.

(2) The rentals, fees, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues.

(3) The setting aside of reserves or sinking funds, and the regulation and disposition thereof.

(4) Limitations on the right of the authority or its agent to restrict and regulate the use of the project.

(5) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging those proceeds to secure the payment of the bonds or any issue of the bonds.

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which that consent may be given.

(8) Limitations on the amount of moneys derived from the project to be expended for operating, administrative, or other expenses of the authority.

(9) Defining the acts or omissions to act that constitute a default in the duties of the authority to holders of its obligations, and providing the rights and remedies of the holders in the event of a default.

(10) The mortgaging of a project and the site thereof for the purpose of securing the bondholders.

(e) Neither the members of the authority, nor any person executing the bonds or notes, shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The authority shall have power out of any funds available therefor to purchase its bonds or notes. The authority may hold, pledge, cancel, or resell the bonds, subject to and in accordance with agreements with bondholders.

SEC. 6. Section 94146 of the Education Code is amended to read:

94146. (a) Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any political subdivision other than the authority, but shall be payable solely from the funds herein provided. All bonds shall contain on the face thereof a statement to the effect that neither the State of California nor the authority shall be obligated to pay the same or the interest thereon except from revenues of the project or the portion thereof for which they are issued and that neither the faith and credit nor the taxing power of the State of California or of any political subdivision thereof is pledged to the payment of the principal of or the interest on the bonds.

(b) The issuance of bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. No provision of this section shall prevent or be construed to prevent the authority from pledging its full faith and credit or the full faith and credit of a participating private college or participating nonprofit entity to the payment of bonds or issue of bonds authorized pursuant to this chapter.

SEC. 7. Section 94147 of the Education Code is amended to read:

94147. (a) The authority may fix, revise, charge, and collect rates, rents, fees, and charges for the use of and for the services furnished or to be furnished by each project, and may contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof. These rates, rents, fees, and charges shall be fixed and adjusted in respect of the aggregate of rents, rates, fees, and charges from the project so as to provide funds sufficient with other revenues or moneys, if any, to accomplish all of the following:

(1) Pay the cost of maintaining, repairing and operating the project and each and every portion thereof, to the extent that the payment of that cost has not otherwise been adequately provided for.

(2) Pay the principal of, and the interest on, outstanding bonds of the authority issued in respect of that project as the same shall become due and payable.

(3) Create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, bonds of the authority.

(b) (1) The rates, rents, fees, and charges referenced in subdivision (a) are not subject to supervision or regulation by any department, commission, board, body, bureau, or agency of this state other than the authority. A sufficient amount of the revenues derived in respect of a project, except a part of those revenues that is necessary to pay the cost of maintenance, repair, and operation and to provide reserves for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of any bonds of the authority or in the trust agreement securing the same, shall be set aside at regular intervals provided in the resolution or trust agreement in a sinking or other similar fund.

(2) The fund established pursuant to paragraph (1) is pledged to, and charged with, the payment of the principal of and the interest on, the bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided.

(3) The pledge required by paragraph (2) shall be valid and binding from the time when the pledge is made. The rates, rents, fees and charges and other revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of that pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the authority.

(4) The use and disposition of moneys to the credit of the sinking or other similar fund shall be subject to the provisions of the resolution authorizing the issuance of those bonds or of that trust agreement. Except as may otherwise be provided in that resolution or that trust agreement, the sinking or other similar fund shall be a fund for all of those bonds issued to finance projects at a participating college, or bonds issued to finance a project of a participating nonprofit entity, without distinction or priority of one over another.

(5) The authority, in the resolution or trust agreement, may provide that the sinking or other similar fund shall be either of the following:

(A) The fund for a particular project at a participating college and for the bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of bonds having a subordinate lien in respect of the security herein authorized to other bonds of the authority and, in this case, the authority may create separate sinking or other similar funds in respect of those subordinate lien bonds.

(B) The fund for a particular project of a participating nonprofit entity.

SEC. 7.5. Section 94147 of the Education Code is amended to read:

94147. (a) The authority may fix, revise, charge, and collect rates, rents, fees, and charges for the use of and for the services furnished or to be furnished by each project, and may contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof. These rates, rents, fees, and charges shall be fixed and adjusted in respect of the aggregate of rents, rates, fees, and charges from the project so as to provide funds sufficient with other revenues or moneys, if any, to accomplish all of the following:

(1) Pay the cost of maintaining, repairing and operating the project and each and every portion thereof, to the extent that the payment of that cost has not otherwise been adequately provided for.

(2) Pay the principal of, and the interest on outstanding bonds of the authority issued in respect of that project as the same shall become due and payable.

(3) Create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, bonds of the authority.

(b) (1) The rates, rents, fees and charges referenced in subdivision (a) are not subject to supervision or regulation by any department, commission, board, body, bureau, or agency of this state other than the authority. A sufficient amount of the revenues derived in respect of a project, except a part of those revenues that is necessary to pay the cost of maintenance, repair, and operation and to provide reserves for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of any bonds of the authority or in the trust agreement securing the same, shall be set aside at regular intervals provided in the resolution or trust agreement in a sinking or other similar fund.

(2) The fund established pursuant to paragraph (1) is pledged to, and charged with, the payment of the principal of and the interest on, the bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided.

(3) The pledge required by paragraph (2) shall be valid and binding from the time when the pledge is made. The rates, rents, fees and charges and other revenues or other moneys so pledged and thereafter received

by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of that pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the authority.

(4) The use and disposition of moneys to the credit of the sinking or other similar fund shall be subject to the provisions of the resolution authorizing the issuance of those bonds or of that trust agreement. Except as may otherwise be provided in that resolution or that trust agreement, the sinking or other similar fund shall be a fund for all of those bonds issued to finance projects at a participating college, or bonds issued to finance a project of a participating nonprofit entity, without distinction or priority of one over another.

(5) The authority, in the resolution or trust agreement, may provide that the sinking or other similar fund shall be either of the following:

(A) The fund for a particular project at a participating college and for the bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of bonds having a subordinate lien in respect of the security herein authorized to other bonds of the authority and, in this case, the authority may create separate sinking or other similar funds in respect of those subordinate lien bonds.

(b) The fund for a particular project of a participating nonprofit entity.

SEC. 8. Section 94154 of the Education Code is amended to read:

94154. The State of California pledges and agrees with the holders of the bonds, notes, and other obligations issued pursuant to authority contained in this chapter, and with those parties who may enter into contracts with the authority pursuant to the provisions of this chapter, that the state will not limit, alter, or restrict the rights hereby vested in the authority and the participating private colleges and participating nonprofit entities to maintain, construct, reconstruct, and operate any project as defined in this chapter or to establish and collect the rents, fees, receipts, or other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized by this chapter, and with the parties who may enter into contracts with the authority pursuant this chapter, or in any way impair the rights or remedies of the holders of those bonds or those parties until the bonds, together with interest thereon, are fully paid and discharged and the contracts are fully performed on the part of the authority. The authority as a public body corporate and politic may include the pledge herein made in its bonds and contracts.

SEC. 8.5. Section 94154 of the Education Code is amended to read:

94154. The State of California pledges and agrees with the holders of the bonds, notes, and other obligations issued pursuant to authority contained in this chapter, and with those parties who may enter into contracts with the authority pursuant to the provisions of this chapter, that the state will not limit, alter, or restrict the rights hereby vested in the authority and the participating private colleges and participating nonprofit entities to maintain, construct, reconstruct, and operate any project as defined in this chapter or to establish and collect the rents, fees, receipts, or other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized by this chapter, and with the parties who may enter into contracts with the authority pursuant this chapter, or in any way impair the rights or remedies of the holders of those bonds or those parties until the bonds, together with interest thereon, are fully paid and discharged and the contracts are fully performed on the part of the authority. The authority as a public body corporate and politic may include the pledge herein made in its bonds and contracts.

SEC. 9. Section 94190 of the Education Code is amended to read:

94190. (a) In addition to the foregoing powers, the authority shall have power to accomplish both of the following:

(1) Upon application of the participating college or participating nonprofit entity, to construct, acquire, or otherwise provide projects for the use and benefit of the participating private college, public college, or public university and the students, faculty, and staff of that participating institution. The participating college or participating nonprofit entity for which a project is undertaken by the authority shall approve the plans, specifications, and location of that project.

(2) To lease any project provided pursuant to this section to the participating private college or participating nonprofit entity for which that project is provided. When the liabilities of the authority incurred for a project have been met and the bonds of the authority issued therefor have been paid, or those liabilities and bonds have otherwise been discharged, the authority shall transfer title to all the real and personal property of that project vested in the authority, to the participating college or participating nonprofit entity in connection with which that project is then leased. However, if at any time prior thereto a participating private college ceases to offer educational facilities, then the title shall vest in the State of California.

(b) Any lease of a project authorized by this section shall be a general obligation of the lessee and may contain provisions, which shall be a part of the contract with the holders of the bonds of the authority issued for the project, as to all of the following:

(1) Pledging all or any part of the moneys, earnings, income, and revenues derived by the lessee from the project or any part or parts thereof, or other personal property of the lessee, to secure payments required under the terms of that lease.

(2) The rates, rentals, fees, and other charges to be fixed and collected by the lessee, the amounts to be raised in each year thereby, and the use and disposition of that income and those moneys, earnings, and revenues.

(3) The setting aside of reserves and the creation of special funds and the regulation and disposition thereof.

(4) The procedure, if any, by which the terms of the lease may be amended, the amount of bonds the holders of which must consent thereto, and the manner in which that consent may be given.

(5) Vesting in a trustee or trustees the specified properties, rights, powers, and duties as shall be deemed necessary or desirable for the security of the holders of the bonds of the authority issued for those projects.

(6) The obligations of the lessee with respect to the replacement, reconstruction, maintenance, operation, repairs, and insurance of that project.

(7) Defining the acts or omissions to act that constitute a default in the obligations and duties of the lessee, and providing for the rights and remedies of the authority and of its bondholders in the event of default.

(8) Any other matters, of like or different character, that may be deemed necessary or desirable for the security or protection of the authority or the holders of its bonds.

SEC. 10. Section 94191 of the Education Code is amended to read:

94191. The authority also shall have power:

(a) To make loans to any participating private college or participating nonprofit entity for the acquisition or construction of projects in accordance with a loan agreement and in accordance with plans and specifications that shall be subject to approval by the authority. No loan shall exceed the total cost of the project and the equipment therefor as determined by the authority. Each loan shall be premised upon an agreement between the authority and the participating private college or participating nonprofit entity as to payment, security, maturity, redemption, interest, and other appropriate matters.

(b) To make loans to any participating private college or participating nonprofit entity to refund existing bonds, mortgages, or advances or other obligations incurred, given, or made by the private college or participating nonprofit entity for the acquisition or construction of any projects.

SEC. 11. Section 94192 of the Education Code is amended to read:

94192. For the purpose of obtaining and securing loans under Section 94191, every participating private college or participating nonprofit entity shall, notwithstanding the provisions of any other law, have power to mortgage and pledge any of its real or personal property, and to pledge any of its income from whatever source to repay the principal of and interest on any loan made to it by the authority or to pay the interest on and principal and redemption premium, if any, of any note, bond, or other evidence of indebtedness evidencing the debt created by that loan; provided that the foregoing shall not be construed to authorize actions in conflict with specific legislation, trusts, endowment, or other agreements relating to specific properties or funds.

SEC. 12. Section 94193 of the Education Code is amended to read:

94193. Moneys of the authority received from any participating private college or participating nonprofit entity in payment of any sum due to the authority pursuant to the terms of any loan or other agreement or any bond, note, or other evidence of indebtedness, shall be deposited in an account in which only moneys received from participating private colleges or participating nonprofit entities shall be deposited, and shall be kept separate and apart from and not commingled with any other moneys of the authority. Moneys deposited in that account shall be paid out on checks signed by the chairperson of the authority or by a person or persons authorized by the authority.

SEC. 13. Section 94195 of the Education Code is amended to read:

94195. Any pledge of moneys, earnings, income, or revenues authorized with respect to participating private colleges or participating nonprofit entities, pursuant to this chapter, shall be valid and binding from the time when the pledge is made. The moneys, earnings, income, or revenues so pledged and thereafter received by the pledgor shall immediately be subject to the lien of that pledge without any physical delivery thereof or further act. The lien of that pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the pledgor irrespective of whether the parties have notice thereof. No instrument by which a pledge is created need be filed or recorded in any manner.

SEC. 14. Section 1.5 of this bill incorporates amendments to Section 94100 of the Education Code proposed by both this bill and SB 1209. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 94100 of the Education Code, and (3) this bill is enacted after SB 1209, in which case Section 1 of this bill shall not become operative.

SEC. 15. Section 2.5 of this bill incorporates amendments to Section 94110 of the Education Code proposed by both this bill and SB 1209. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends

Section 94110 of the Education Code, and (3) this bill is enacted after SB 1209, in which case Section 2 of this bill shall not become operative.

SEC. 16. Section 4.5 of this bill incorporates amendments to Section 94140 of the Education Code proposed by both this bill and SB 1209. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 94140 of the Education Code, and (3) this bill is enacted after SB 1209, in which case Section 4 of this bill shall not become operative.

SEC. 17. Section 7.5 of this bill incorporates amendments to Section 94147 of the Education Code proposed by both this bill and SB 1209. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 94147 of the Education Code, and (3) this bill is enacted after SB 1209, in which case Section 7 of this bill shall not become operative.

SEC. 18. Section 8.5 of this bill incorporates amendments to Section 94154 of the Education Code proposed by both this bill and SB 1209. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 94154 of the Education Code, and (3) this bill is enacted after SB 1209, in which case Section 8 of this bill shall not become operative.

CHAPTER 570

An act to add Section 48.8 to the Civil Code, relating to liability.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 48.8 is added to the Civil Code, to read:

48.8. (a) A communication by any person to a school principal, or a communication by a student attending the school to the student's teacher or to a school counselor or school nurse and any report of that communication to the school principal, stating that a specific student or other specified person has made a threat to commit violence or potential violence on the school grounds involving the use of a firearm or other deadly or dangerous weapon, is a communication on a matter of public concern and is subject to liability in defamation only upon a showing by clear and convincing evidence that the communication or report was made with knowledge of its falsity or with reckless disregard for the truth or falsity of the communication. Where punitive damages are alleged, the provisions of Section 3294 shall also apply.

(b) As used in this section, ''school'' means a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive.

CHAPTER 571

An act to amend Section 66903 of the Education Code, relating to the California Postsecondary Education Commission.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 66903 of the Education Code is amended to read:

66903. The commission shall have the following functions and responsibilities in its capacity as the statewide postsecondary education planning and coordinating agency and adviser to the Legislature and the Governor:

(a) It shall require the governing boards of the segments of public postsecondary education to develop and submit to the commission institutional and systemwide long-range plans in a form determined by the commission after consultation with the segments.

(b) It shall prepare a state plan for postsecondary education that shall integrate the planning efforts of the public segments with other pertinent plans. The commission shall seek to resolve conflicts or inconsistencies among segmental plans in consultation with the segments. If these consultations are unsuccessful, the commission shall report the unresolved issues to the Legislature with recommendations for resolution. In developing the plan, the commission shall consider at least the following factors:

(1) The need for, and location of, new facilities.

(2) The range and kinds of programs appropriate to each institution or system.

(3) The budgetary priorities of the institutions and systems of postsecondary education.

(4) The impact of various types and levels of student charges on students and on postsecondary education programs and institutions.

(5) The appropriate levels of state-funded student financial aid.

(6) The access and admission of students to postsecondary education.

(7) The educational programs and resources of independent and private postsecondary institutions.

(8) The provisions of this division differentiating the functions of the public systems of higher education.

(c) It shall update the plan periodically, as appropriate.

(d) It shall participate in appropriate stages of the executive and the legislative budget processes as requested by the executive and the legislative branches, and shall advise the executive and the legislative branches as to whether segmental programmatic budgetary requests are compatible with the state plan. It is not intended that the commission hold independent budget hearings.

(e) It shall advise the Legislature and the Governor regarding the need for, and location of, new institutions and campuses of public higher education.

(f) It shall review proposals by the public segments for new programs, the priorities that guide them, the degree of coordination with nearby public, independent, and private postsecondary educational institutions, and shall make recommendations regarding those proposals to the Legislature and the Governor.

(g) In consultation with the public segments, it shall establish a schedule for segmental review of selected educational programs, evaluate the program approval, review, and disestablishment processes of the segments, and report its findings and recommendations to the Legislature and the Governor.

(h) It shall serve as a stimulus to the segments and institutions of postsecondary education by projecting and identifying societal and educational needs and encouraging adaptability to change.

(i) It shall periodically collect or conduct, or both collect and conduct, studies of projected manpower supply and demand, in cooperation with appropriate state agencies, and disseminate the results of those studies to institutions of postsecondary education and to the public in order to improve the information base upon which student choices are made.

(j) It shall periodically review and make recommendations concerning the need for, and availability of, postsecondary programs for adult and continuing education.

(k) It shall develop criteria for evaluating the effectiveness of all aspects of postsecondary education.

(*l*) It shall maintain and update annually an inventory of all off-campus programs and facilities for education, research, and community services operated by public and independent institutions of postsecondary education.

(m) (1) It shall act as a clearinghouse for postsecondary education information and as a primary source of information for the Legislature, the Governor, and other agencies. It shall develop and maintain a comprehensive database that does all of the following:

(A) Ensures comparability of data from diverse sources.

(B) Supports longitudinal studies of individual students as they progress through the state's postsecondary educational institutions, based upon the commission's existing student database through the use of a unique student identifier.

(C) Is compatible with the California School Information System and the student information systems developed and maintained by the public segments of higher education, as appropriate.

(D) Provides Internet access to data, as appropriate, to the sectors of higher education.

(E) Provides each of the educational segments access to the data made available to the commission for the purposes of the database, in order to support, most efficiently and effectively, statewide, segmental, and individual campus educational research information needs.

(2) The commission, in implementing paragraph (1), shall comply with the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) relating to the disclosure of personally identifiable information concerning students.

(3) The commission shall not make available any personally identifiable information received from a postsecondary educational institution concerning students for any regulatory purpose unless the institution has authorized the commission to provide that information on behalf of the institution.

(4) The commission shall provide 30-day notification to the chairpersons of the appropriate legislative policy and budget committees of the Legislature, to the Director of Finance, and to the Governor prior to making any significant changes to the student information contained in the database.

(n) It shall establish criteria for state support of new and existing programs, in consultation with the public segments, the Department of Finance, and the Joint Legislative Budget Committee.

(o) It shall comply with the appropriate provisions of the federal Education Amendments of 1972 (P.L. 92-318), as specified in Section 67000.

(p) It shall consider the relationship among academic education and vocational education and job training programs, and shall actively consult with representatives of public and private education.

(q) It shall review all proposals for changes in eligibility pools for admission to public institutions and segments of postsecondary education and shall make recommendations to the Legislature, the Governor, and institutions of postsecondary education. In carrying out this subdivision, the commission periodically shall conduct a study of the percentages of California public high school graduates estimated to be eligible for admission to the University of California and California State University. The changes made to this subdivision during the

2001–02 Regular Session of the Legislature shall be implemented only during those fiscal years for which funding is provided for the purposes of those provisions in the annual Budget Act or in another measure.

(r) It shall report periodically to the Legislature and the Governor regarding the financial conditions of independent institutions, their enrollment and application figures, the number of student spaces available, and the respective cost of utilizing those spaces as compared to providing additional public spaces. The reports shall include recommendations concerning state policies and programs having a significant impact on independent institutions.

(s) Upon request of the Legislature or the Governor, it shall submit to the Legislature and the Governor a report on all matters so requested that are compatible with its role as the statewide postsecondary education planning and coordinating agency. Upon request of individual Members of the Legislature or personnel in the executive branch, the commission shall submit information or a report on any matter to the extent that sufficient resources are available. From time to time, it also may submit to the Legislature and the Governor a report that contains recommendations as to necessary or desirable changes, if any, in the functions, policies, and programs of the several segments of public, independent, and private postsecondary education.

(t) It may undertake other functions and responsibilities that are compatible with its role as the statewide postsecondary education planning and coordinating agency.

SEC. 2. Section 66903 of the Education Code is amended to read:

66903. The commission has the following functions and responsibilities in its capacity as the statewide postsecondary education planning and coordinating agency and adviser to the Legislature and the Governor:

(a) It shall require the governing boards of the segments of public postsecondary education to develop and submit to the commission institutional and systemwide long-range plans in a form determined by the commission after consultation with the segments.

(b) It shall prepare a state plan for postsecondary education that shall integrate the planning efforts of the public segments with other pertinent plans. The commission shall seek to resolve conflicts or inconsistencies among segmental plans in consultation with the segments. If these consultations are unsuccessful, the commission shall report the unresolved issues to the Legislature with recommendations for resolution. In developing the plan, the commission shall consider at least the following factors:

(1) The need for, and location of, new facilities.

(2) The range and kinds of programs appropriate to each institution or system.

(3) The budgetary priorities of the institutions and systems of postsecondary education.

(4) The impact of various types and levels of student charges on students and on postsecondary education programs and institutions.

(5) The appropriate levels of state-funded student financial aid.

(6) The access and admission of students to postsecondary education.

(7) The educational programs and resources of independent and private postsecondary institutions.

(8) The provisions of this division differentiating the functions of the public systems of higher education.

(c) It shall update the plan periodically, as appropriate.

(d) It shall participate in appropriate stages of the executive and the legislative budget processes as requested by the executive and the legislative branches, and shall advise the executive and the legislative branches as to whether segmental programmatic budgetary requests are compatible with the state plan. It is not intended that the commission hold independent budget hearings.

(e) It shall advise the Legislature and the Governor regarding the need for, and location of, new institutions and campuses of public higher education.

(f) It shall review proposals by the public segments for new programs, the priorities that guide them, and the degree of coordination with nearby public, independent, and private postsecondary educational institutions, and shall make recommendations regarding those proposals to the Legislature and the Governor.

(g) In consultation with the public segments, it shall establish a schedule for segmental review of selected educational programs, evaluate the program approval, review, and disestablishment processes of the segments, and report its findings and recommendations to the Legislature and the Governor.

(h) It shall serve as a stimulus to the segments and institutions of postsecondary education by projecting and identifying societal and educational needs and encouraging adaptability to change.

(i) It shall periodically collect or conduct, or both collect and conduct, studies of projected manpower supply and demand, in cooperation with appropriate state agencies, and disseminate the results of those studies to institutions of postsecondary education and to the public in order to improve the information base upon which student choices are made.

(j) It shall periodically review and make recommendations concerning the need for, and availability of, postsecondary programs for adult and continuing education.

(k) It shall develop criteria for evaluating the effectiveness of all aspects of postsecondary education.

(*l*) It shall maintain and update annually an inventory of all off-campus programs and facilities for education, research, and community services operated by public and independent institutions of postsecondary education.

(m) (1) It shall act as a clearinghouse for postsecondary education information and as a primary source of information for the Legislature, the Governor, and other agencies. It shall develop and maintain a comprehensive database that does all of the following:

(A) Ensures comparability of data from diverse sources.

(B) Supports longitudinal studies of individual students as they progress through the state's postsecondary educational institutions, based upon the commission's existing student database through the use of a unique student identifier.

(C) Is compatible with the California School Information System and the student information systems developed and maintained by the public segments of higher education, as appropriate.

(D) Provides Internet access to data, as appropriate, to the sectors of higher education.

(E) Provides each of the educational segments access to the data made available to the commission for the purposes of the database, in order to support, most efficiently and effectively, statewide, segmental, and individual campus educational research information needs.

(2) The commission, in implementing paragraph (1), shall comply with the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) relating to the disclosure of personally identifiable information concerning students.

(3) The commission may not make available any personally identifiable information received from a postsecondary educational institution concerning students for any regulatory purpose unless the institution has authorized the commission to provide that information on behalf of the institution.

(4) The commission shall provide 30-day notification to the chairpersons of the appropriate legislative policy and budget committees of the Legislature, to the Director of Finance, and to the Governor prior to making any significant changes to the student information contained in the database.

(n) It shall establish criteria for state support of new and existing programs, in consultation with the public segments, the Department of Finance, and the Joint Legislative Budget Committee.

(o) It shall comply with the appropriate provisions of the federal Education Amendments of 1972 (P.L. 92-318), as specified in Section 67000.

(p) It shall consider the relationship among academic education and vocational education and job training programs, and shall actively consult with representatives of public and private education.

(q) It shall review all proposals for changes in eligibility pools for admission to public institutions and segments of postsecondary education and shall make recommendations to the Legislature, the Governor, and institutions of postsecondary education. In carrying out this subdivision, the commission periodically shall conduct a study of the percentages of California public high school graduates estimated to be eligible for admission to the University of California and the California State University. The changes made to this subdivision during the 2001–02 Regular Session of the Legislature shall be implemented only during those fiscal years for which funding is provided for the purposes of those provisions in the annual Budget Act or in another measure.

(r) It shall report periodically to the Legislature and the Governor regarding the financial conditions of independent institutions, their enrollment and application figures, the number of student spaces available, and the respective cost of utilizing those spaces as compared to providing additional public spaces. The reports shall include recommendations concerning state policies and programs having a significant impact on independent institutions.

(s) Upon request of the Legislature or the Governor, it shall submit to the Legislature and the Governor a report on all matters so requested that are compatible with its role as the statewide postsecondary education planning and coordinating agency. Upon request of individual Members of the Legislature or personnel in the executive branch, the commission shall submit information or a report on any matter to the extent that sufficient resources are available. From time to time, it also may submit to the Legislature and the Governor a report that contains recommendations as to necessary or desirable changes, if any, in the functions, policies, and programs of the several segments of public, independent, and private postsecondary education.

(t) In consultation with the public segments, it shall consider the development of facilities to be used by more than one segment of public higher education, commonly called ''joint-use facilities.'' It shall recommend to the Legislature criteria and processes for different segments to utilize bond funds for these intersegmental, joint-use facilities.

(u) It may undertake other functions and responsibilities that are compatible with its role as the statewide postsecondary education planning and coordinating agency.

SEC. 3. Section 2 of this bill incorporates amendments to Section 66903 of the Education Code proposed by both this bill and SB 517. It

shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 66903 of the Education Code, and (3) this bill is enacted after SB 517, in which case Section 1 of this bill shall not become operative.

CHAPTER 572

An act to amend Section 6300 of, and to add Section 6306 to, the Family Code, to add Section 273.75 to the Penal Code, and to amend Section 213.5 of the Welfare and Institutions Code, relating to domestic violence.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. It is the intent of the Legislature that courts considering the issuance or denial of a protective order pursuant to Section 6300 of the Family Code or Section 213.5 of the Welfare and Institutions Code obtain available background information concerning the subject of the proposed order. That information should include any relevant criminal history, probation or parole status, outstanding warrants, and the existence of any other protective orders or violations of those orders. This information is to be obtained in order to allow the court to consider the potential risks posed by the subject of the proposed order.

SEC. 2. Section 6300 of the Family Code is amended to read:

6300. An order may be issued under this part, with or without notice, to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit or, if necessary, an affidavit and any additional information provided to the court pursuant to Section 6306, shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.

SEC. 3. Section 6306 is added to the Family Code, to read:

6306. (a) Prior to a hearing on the issuance or denial of an order under this part, the court shall ensure that a search is or has been conducted to determine if the subject of the proposed order has any prior criminal conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; has any misdemeanor conviction involving domestic violence, weapons, or other violence; has any outstanding warrant; is currently on

parole or probation; or has any prior restraining order or any violation of a prior restraining order. The search shall be conducted of all records and data bases readily available and reasonably accessible to the court, including, but not limited to, the following:

(1) The Violent Crime Information Network (VCIN).

(2) The Supervised Release File.

(3) State summary criminal history information maintained by the Department of Justice pursuant to Section 11105 of the Penal Code.

(4) The Federal Bureau of Investigation's nationwide data base.

(5) Locally maintained criminal history records or data bases.

However, a record or data base need not be searched if the information available in that record or data base can be obtained as a result of a search conducted in another record or data base.

(b) (1) Prior to deciding whether to issue an order under this part or when determining appropriate temporary custody and visitation orders, the court shall consider the following information obtained pursuant to a search conducted under subdivision (a): any conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; any misdemeanor conviction involving domestic violence, weapons, or other violence; any outstanding warrant; parole or probation status; any prior restraining order; and any violation of a prior restraining order.

(2) Information obtained as a result of the search that does not involve a conviction described in this subdivision shall not be considered by the court in making a determination regarding the issuance of an order pursuant to this part. That information shall be destroyed and shall not become part of the public file in this or any other civil proceeding.

(c) (1) After issuing its ruling, the court shall advise the parties that they may request the information described in subdivision (b) upon which the court relied. The court shall admonish the party seeking the proposed order that it is unlawful, pursuant to Sections 11142 and 13303 of the Penal Code, to willfully release the information, except as authorized by law.

(2) Upon the request of either party to obtain the information described in subdivision (b) upon which the court relied, the court shall release the information to the parties or, upon either party's request, to his or her attorney in that proceeding.

(3) The party seeking the proposed order may release the information to his or her counsel, court personnel, and court-appointed mediators for the purpose of seeking judicial review of the court's order or for purposes of court proceedings under Section 213.5 of the Welfare and Institutions Code.

(d) Any information obtained as a result of the search conducted pursuant to subdivision (a) and relied upon by the court shall be

maintained in a confidential case file and shall not become part of the public file in the proceeding or any other civil proceeding. However, the contents of the confidential case file shall be disclosed to the court-appointed mediator assigned to the case or to a child custody evaluator appointed by the court pursuant to Section 3111 of the Family Code or Section 730 of the Evidence Code. All court-appointed mediators and child custody evaluators appointed or contracted by the court pursuant to Section 3111 of the Family Code or Section 730 of the Evidence Code who may receive information from the search conducted pursuant to subdivision (a) shall be subject to, and shall comply with, the California Law Enforcement Telecommunications System policies, practices, and procedures adopted pursuant to Section 15160 of the Government Code.

(e) If the results of the search conducted pursuant to subdivision (a) indicate that an outstanding warrant exists against the subject of the order, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of the issuance and contents of any protective order and of any other information obtained through the search that the court determines is appropriate. The law enforcement officials so notified shall take all actions necessary to execute any outstanding warrants or any other actions, with respect to the restrained person, as appropriate and as soon as practicable.

(f) If the results of the search conducted pursuant to subdivision (a) indicate that the subject of the order is currently on parole or probation, the court shall order the clerk of the court to immediately notify, by the most effective means available, the appropriate parole or probation officer of the issuance and contents of any protective order issued by the court and of any other information obtained through the search that the court determines is appropriate. That officer shall take all actions necessary to revoke any parole or probation, or any other actions, with respect to the restrained person, as appropriate and as soon as practicable.

(g) Nothing in this section shall delay the granting of an application for an order that may otherwise be granted without the information resulting from the data base search. If the court finds that a protective order under this part should be granted on the basis of the affidavit presented with the petition, the court shall issue the protective order and shall then ensure that a search is conducted pursuant to subdivision (a) prior to the hearing.

SEC. 4. Section 273.75 is added to the Penal Code, to read:

273.75. (a) On any charge involving acts of domestic violence as defined in subdivisions (a) and (b) of Section 13700 of the Penal Code or Sections 6203 and 6211 of the Family Code, the district attorney or

prosecuting city attorney shall perform or cause to be performed, by accessing the electronic data bases enumerated in subdivision (b), a thorough investigation of the defendant's history, including, but not limited to, prior convictions for domestic violence, other forms of violence or weapons offenses and any current protective or restraining order issued by any civil or criminal court. This information shall be presented for consideration by the court (1) when setting bond or when releasing a defendant on his or her own recognizance at the arraignment, if the defendant is in custody, and (2) upon consideration of any plea agreement. In determining bail or release upon a plea agreement, the court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released.

(b) For purposes of this section, the district attorney or prosecuting city attorney shall search or cause to be searched the following data bases, when readily available and reasonably accessible:

(1) The Violent Crime Information Network (VCIN).

(2) The Supervised Release File.

(3) State summary criminal history information maintained by the Department of Justice pursuant to Section 11105 of the Penal Code.

(4) The Federal Bureau of Investigation's nationwide data base.

(5) Locally maintained criminal history records or data bases.

However, a record or data base need not be searched if the information available in that record or data base can be obtained as a result of a search conducted in another record or data base.

(c) If the investigation required by this section reveals a current civil protective or restraining order or a protective or restraining order issued by another criminal court and involving the same or related parties, and if a protective or restraining order is issued in the current criminal proceeding, the district attorney or prosecuting city attorney shall send relevant information regarding the contents of the order issued in the current criminal proceeding, and any information regarding a conviction of the defendant, to the other court immediately after the order has been issued. When requested, the information described in this subdivision may be sent to the appropriate family, juvenile, or civil court. When requested, and upon a showing of a compelling need, the information described in this section may be sent to a court in another state.

SEC. 5. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian, or current or former member of the child's household

from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any parent, guardian, or current or former member of the child's household from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining a parent, guardian, or current or former member of the child's household from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2).

(b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a ward of the juvenile court, and until the time that the petition is dismissed or wardship is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian or current or former member of the child's household from molesting, attacking, threatening, sexually assaulting, stalking, or battering the child; (2) excluding any parent, guardian, or current or former member of the child's household from the dwelling of the person who has care, custody, and control of the child; or (3) enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child.

(c) In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this section may be held simultaneously with any regularly scheduled hearings held in proceedings to declare a child a dependent child or ward of the juvenile court pursuant to Section 300, 601, or 602, or subsequent hearings regarding the dependent child or ward.

(d) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivisions (a), (b), and (c). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed three years, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(e) (1) The juvenile court may issue an order made pursuant to subdivision (a), (c), or (d) excluding a person from a residence or dwelling. This order may be issued for the time and on the conditions

that the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.

(2) The court may issue an order under paragraph (1) only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(C) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

(f) Any order issued pursuant to subdivision (a), (b), (c), or (d) shall state on its face the date of expiration of the order.

(g) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a), (b), (c), or (d), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the child and other locations where the court determines that acts of domestic violence or abuse against the child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a), (b), (c), or (d) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(h) Any willful and knowing violation of any order granted pursuant to subdivision (a), (b), (c), or (d) shall be a misdemeanor punishable under Section 273.65 of the Penal Code.

(i) A juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(j) Information on any juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be

transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

(k) (1) Prior to a hearing on the issuance or denial of an order under this part, a search shall be conducted as described in subdivision (a) of Section 6306 of the Family Code.

(2) Prior to deciding whether to issue an order under this part, the court shall consider the following information obtained pursuant to a search conducted under paragraph (1): any conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; any misdemeanor conviction involving domestic violence, weapons, or other violence; any outstanding warrant; parole or probation status; any prior restraining order; and any violation of a prior restraining order.

(3) (A) If the results of the search conducted pursuant to paragraph (1) indicate that an outstanding warrant exists against the subject of the search, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of any information obtained through the search that the court determines is appropriate. The law enforcement officials so notified shall take all actions necessary to execute any outstanding warrants or any other actions, as appropriate and as soon as practicable.

(B) If the results of the search conducted pursuant to paragraph (1) indicate that the subject of the search is currently on parole or probation, the court shall order the clerk of the court to immediately notify, by the most effective means available, the appropriate parole or probation officer of any information obtained through the search that the court determines is appropriate. The parole or probation officer so notified shall take all actions necessary to revoke any parole or probation, or any other actions, with respect to the subject person, as appropriate and as soon as practicable.

SEC. 5.5. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining any person from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2).

A court issuing an ex parte order pursuant to this subdivision may simultaneously issue an ex parte order enjoining any person from contacting, threatening, molesting, attacking, striking, sexually assaulting, stalking, battering, or disturbing the peace of any parent, legal guardian, or current caretaker of the child, regardless of whether the child resides with that parent, legal guardian, or current caretaker, upon application in the manner provided by Section 527 of the Code of Civil Procedure.

(b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a ward of the juvenile court, and until the time that the petition is dismissed or wardship is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, threatening, sexually assaulting, stalking, or battering the child; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; or (3) enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child.

(c) In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this section may be held simultaneously with any regularly scheduled hearings held in proceedings to declare a child a dependent child or ward of the juvenile court pursuant to Section 300, 601, or 602, or subsequent hearings regarding the dependent child or ward.

(d) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivisions (a), (b), and (c). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed three years, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(e) (1) The juvenile court may issue an order made pursuant to subdivision (a), (c), or (d) excluding a person from a residence or dwelling. This order may be issued for the time and on the conditions that the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.

(2) The court may issue an order under paragraph (1) only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(C) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

(f) Any order issued pursuant to subdivision (a), (b), (c), or (d) shall state on its face the date of expiration of the order.

(g) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a), (b), (c), or (d), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the child and other locations where the court determines that acts of domestic violence or abuse against the child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a), (b), (c), or (d) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(h) Any willful and knowing violation of any order granted pursuant to subdivision (a), (b), (c), or (d) shall be a misdemeanor punishable under Section 273.65 of the Penal Code.

(i) A juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(j) Information on any juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

(k) (1) Prior to a hearing on the issuance or denial of an order under this part, a search shall be conducted as described in subdivision (a) Section 6306 of the Family Code.

(2) Prior to deciding whether to issue an order under this part, the court shall consider the following information obtained pursuant to a search conducted under paragraph (1): any conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; any misdemeanor conviction involving domestic violence, weapons, or other violence; any outstanding warrant; parole or probation status; any prior restraining order; and any violation of a prior restraining order.

(3) (A) If the results of the search conducted pursuant to paragraph (1) indicate that an outstanding warrant exists against the subject of the search, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of any information obtained through the search that the court determines is appropriate. The law enforcement officials so notified shall take all actions necessary to execute any outstanding warrants or any other actions, as appropriate and as soon as practicable.

(B) If the results of the search conducted pursuant to paragraph (1) indicate that the subject of the search is currently on parole or probation, the court shall order the clerk of the court to immediately notify, by the most effective means available, the appropriate parole or probation officer of any information obtained through the search that the court determines is appropriate. The parole or probation officer so notified shall take all actions necessary to revoke any parole or probation, or any other actions, with respect to the subject person, as appropriate and as soon as practicable.

SEC. 6. Section 5.5 of this bill incorporates amendments to Section 213.5 of the Welfare and Institutions Code proposed by both this bill and AB 1129. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 213.5 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1129, in which case Section 5 of this bill shall not become operative.

SEC. 7. This act shall be implemented in those courts identified by the Judicial Council as having resources currently available for these purposes. This act shall be implemented in other courts to the extent that funds are appropriated for purposes of the act in the annual Budget Act.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 573

An act to amend Sections 46200, 46200.5, 46201, 46201.5, and 46202 of, and to repeal and add Section 46206 of, the Education Code, relating to educational instruction and services.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 46200 of the Education Code is amended to read:

46200. (a) In the 1984–85 fiscal year, for each school district that certifies to the Superintendent of Public Instruction that it offers 180 days or more of instruction per school year, the Superintendent of Public Instruction shall apportion thirty-five dollars ($35) per unit of average daily attendance, exclusive of adult average daily attendance, the average daily attendance of pupils while participating in regional occupation centers or programs, and average daily attendance for pupils attending summer school. A year-round school shall be deemed to be in compliance with the 180-day requirement if it certifies to the Superintendent of Public Instruction that it is a year-round school and maintains its school for five more days, or the equivalent thereof, than maintained in the 1982–83 fiscal year not to exceed 180 days. Each school district that received an apportionment pursuant to this subdivision in the 1984–85 fiscal year shall add thirty-five dollars ($35) to the district's base revenue limit per unit of average daily attendance for the 1985–86 fiscal year.

(b) For any school district that received an apportionment pursuant to subdivision (a) and that offered less than 180 days, or offered less than the number of days required in subdivision (a) for multitrack year-round schools, of instruction in the 1985–86 fiscal year to the 2000–01 fiscal year, inclusive, and that does not provide the minimum number of instructional minutes specified in subdivision (a) of Section 46201 for that fiscal year, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for that fiscal year or years by an amount attributable to the increase received pursuant to

subdivision (a), as adjusted in fiscal years subsequent to the 1984–85 fiscal year.

(c) For any school district that received an apportionment pursuant to subdivision (a) and that offers less than 180 days of instruction or, in multitrack year-round schools, fewer than the number of days required in subdivision (a) for multitrack year-round schools, in the 2001–02 fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall withhold from the district's revenue limit apportionment for the average daily attendance of each affected grade level the sum of 0.0056 multiplied by that apportionment, for each day less than 180, or, in multitrack year-round schools, for each day less than the number of days required in subdivision (a) for year-round schools that the district offered.

(d) For any school district that received an apportionment pursuant to subdivision (a) and that offered less than 180 days of instruction as required in subdivision (a) in the 1985–86 fiscal year, to either the end of the final year of the teacher bargaining unit contract in force in that district on January 1, 2002, inclusive, or, if no teacher bargaining unit contract was in force in that district on January 1, 2002, to the end of the 2001–02 fiscal year, inclusive, and that provided the minimum number of instructional minutes in subdivision (a) of Section 46201 during all of the period applicable to the district pursuant to this subdivision, subdivision (c) shall not apply until the first fiscal year following the end of the applicable period of years.

SEC. 2. Section 46200.5 of the Education Code is amended to read:

46200.5. (a) In the 1985–86 fiscal year, for each county office of education that certifies to the Superintendent of Public Instruction that it offers 180 days or more of instruction per school year of special day classes pursuant to Section 56364 or Section 56364.2, as applicable, the Superintendent of Public Instruction shall determine an amount equal to seventy dollars ($70) per unit of current year second principal apportionment average daily attendance for special day classes. This computation shall be included in computations made by the superintendent pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30.

(b) For any county office of education that received an apportionment pursuant to subdivision (a) and that offered less than 180 days of instruction in the 1986–87 fiscal year, to the 2000–01 fiscal year, inclusive, and that does not provide the minimum number of instructional minutes specified in subdivision (a) of Section 46201 for that fiscal year, the Superintendent of Public Instruction shall reduce the special education apportionment per unit of average daily attendance for that fiscal year by an amount attributable to the increase received

pursuant to subdivision (a), as adjusted in fiscal years subsequent to the 1985–86 fiscal year.

(c) For any county office of education that receives an apportionment pursuant to subdivision (a) and that offers less than 180 days of instruction in the 2001–02 fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall withhold from the county office of education's revenue limit apportionment for the average daily attendance of each affected grade level the sum of 0.0056 multiplied by that apportionment, for each day less than 180 that the county office of education offered.

SEC. 3. Section 46201 of the Education Code is amended to read:

46201. (a) In each of the 1984–85, 1985–86, and 1986–87 fiscal years, for each school district that certifies to the Superintendent of Public Instruction that it offers at least the amount of instructional time specified in this subdivision at a grade level or levels, the Superintendent of Public Instruction shall determine an amount equal to twenty dollars ($20) per unit of current year second principal apportionment regular average daily attendance in kindergarten and grades 1 to 8, inclusive, and forty dollars ($40) per unit of current year second principal apportionment regular average daily attendance in grades 9 to 12, inclusive. This section shall not apply to adult average daily attendance, the average daily attendance for pupils attending summer schools, alternative schools, regional occupational centers and programs, continuation high schools, or opportunity schools, and the attendance of pupils while participating in community college or independent study programs.

(1) In the 1984–85 fiscal year, for kindergarten and each of grades 1 to 12, inclusive, the sum of subparagraphs (A) and (B):

(A) The number of instructional minutes offered at that grade level in the 1982–83 fiscal year.

(B) One-third of the difference between the number of minutes specified for that grade level in paragraph (3) and the number of instructional minutes offered at that grade level in the 1982–83 fiscal year.

(2) In the 1985–86 fiscal year, for kindergarten and each of grades 1 to 12, inclusive, the sum of subparagraphs (A) and (B):

(A) The number of instructional minutes offered at that grade level in the 1982–83 fiscal year.

(B) Two-thirds of the difference between the number of minutes specified for that grade level in paragraph (3) and the number of instructional minutes offered at that grade level in the 1982–83 fiscal year.

(3) In the 1986–87 fiscal year:

(A) Thirty-six thousand minutes in kindergarten.

(B) Fifty thousand four hundred minutes in grades 1 to 3, inclusive.

(C) Fifty-four thousand minutes in grades 4 to 8, inclusive.

(D) Sixty-four thousand eight hundred minutes in grades 9 to 12, inclusive.

(4) In any fiscal year, each school district that receives an apportionment pursuant to subdivision (a) for average daily attendance in grades 9 to 12, inclusive, shall offer a program of instruction that allows each student to receive at least 24 course years of instruction, or the equivalent, during grades 9 to 12, inclusive.

(5) For any schoolsite at which programs are operated in more than one of the grade levels enumerated in subparagraph (B) or (C) of paragraph (3), the school district may calculate a weighted average of minutes for those grade levels at that schoolsite for purposes of making the certification authorized by this subdivision.

(b) (1) If any of the amounts of instructional time specified in paragraph (3) of subdivision (a) is a lesser number of minutes for that grade level than actually provided by the district in the same grade in the 1982–83 fiscal year, the 1982–83 fiscal year number of minutes for that grade level, adjusted to comply with Section 46111, shall instead be the requirement for the purposes of paragraphs (1), (2), and (3) of subdivision (a). Commencing with the 1990–91 fiscal year, and each fiscal year through the 1995–96 fiscal year, any school district subject to this subdivision that does not maintain the number of instructional minutes for a particular grade level that the school district maintained for the 1982–83 fiscal year, adjusted to comply with Section 46111, shall not be subject to paragraphs (1) to (3), inclusive, of subdivision (c) if that school district maintains at least the minimum number of instructional minutes for each grade level set forth in paragraph (3) of subdivision (a) in the 1990–91 fiscal year and each fiscal year through the 1994–95 fiscal year or the 1995–96 fiscal year for districts whose instructional minutes were adjusted to comply with Section 46111, and thereafter returns to the number of instructional minutes maintained for each grade level in the 1982–83 fiscal year.

(2) The Legislature finds and declares that the school districts to which paragraph (1) is applicable have not offered any less instructional time than is required of all other school districts and therefore should not be forced to pay any penalty.

(c) (1) For any school district that receives an apportionment pursuant to subdivision (a) in the 1984–85 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (1) of subdivision (a) in the 1985–86 fiscal year or any fiscal year thereafter, up to and including the 2000–01 fiscal year, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for the fiscal year in which the

reduction occurs by an amount attributable to the increase in the 1985–86 fiscal year base revenue limit per unit of average daily attendance pursuant to paragraph (4) of subdivision (b) of Section 42238, as adjusted in the 1985–86 fiscal year and fiscal years thereafter.

(2) For each school district that receives an apportionment pursuant to subdivision (a) in the 1985–86 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (2) of subdivision (a) in the 1986–87 fiscal year or any fiscal year thereafter, up to and including the 2000–01 fiscal year, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1986–87 fiscal year base revenue limit per unit of average daily attendance pursuant to paragraph (4) of subdivision (b) of Section 42238, as adjusted in the 1986–87 fiscal year and fiscal years thereafter.

(3) For each school district that receives an apportionment pursuant to subdivision (a) in the 1986–87 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (3) of subdivision (a) in the 1987–88 fiscal year or any fiscal year thereafter, up to and including the 2000–01 fiscal year, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1987–88 fiscal year base revenue limit per unit of average daily attendance pursuant to paragraph (4) of subdivision (b) of Section 42238, as adjusted in the 1987–88 fiscal year and fiscal years thereafter.

(d) For each school district that receives an apportionment pursuant to subdivision (a) in the 1986–87 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (3) of subdivision (a) in the 2001–02 fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall withhold from the district's revenue limit apportionment for the average daily attendance of each affected grade level, the sum of that apportionment multiplied by the percentage of the minimum offered minutes at that grade level that the district failed to offer.

SEC. 4. Section 46201.5 of the Education Code is amended to read:

46201.5. (a) In each of the 1985–86 and 1986–87 fiscal years, for each county office of education that certifies to the Superintendent of Public Instruction that, for special day classes pursuant to Section 56364 or Section 56364.2, as applicable, it offers at least the amount of instructional time specified in this subdivision, the Superintendent of Public Instruction shall determine an amount equal to eighty dollars ($80) in the 1985–86 fiscal year and forty dollars ($40) in the 1986–87 fiscal year per unit of current year second principal apportionment

average daily attendance for special day classes in kindergarten and grades 1 to 8, inclusive, and one hundred sixty dollars ($160) in the 1985–86 fiscal year and eighty dollars ($80) in the 1986–87 fiscal year per unit of current year second principal apportionment average daily attendance for special day classes in grades 9 to 12, inclusive.

This computation shall be included in computations made by the superintendent pursuant to Article 2 (commencing with Section 56836.06) of Chapter 7.2 of Part 30.

(1) In the 1985–86 fiscal year:

(A) 34,500 minutes in kindergarten.

(B) 47,016 minutes in grades 1 to 3, inclusive.

(C) 50,000 minutes in grades 4 to 8, inclusive.

(D) 57,200 minutes in grades 9 to 12, inclusive.

(2) In the 1986–87 fiscal year:

(A) 36,000 minutes in kindergarten.

(B) 50,400 minutes in grades 1 to 3, inclusive.

(C) 54,000 minutes in grades 4 to 8, inclusive.

(D) 64,800 minutes in grades 9 to 12, inclusive.

(b) Each county office of education that receives an apportionment pursuant to subdivision (a) in a fiscal year shall, in the subsequent fiscal year, add the amount received per pupil to the county office's base special education apportionment.

(c) For each county office of education that receives an apportionment pursuant to subdivision (a) in the 1985–86 fiscal year, and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (1) of subdivision (a) in the 1986–87 fiscal year, or any fiscal year thereafter, up to and including the 2000–01 fiscal year, the Superintendent of Public Instruction shall reduce the special education apportionment for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1986–87 fiscal year special education apportionment pursuant to subdivision (b), as adjusted in the 1986–87 fiscal year and fiscal years thereafter.

(d) For each county office of education that receives an apportionment pursuant to subdivision (a) in the 1986–87 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (2) of subdivision (a) in the 1987–88 fiscal year, or any fiscal year thereafter, up to and including the 2000–01 fiscal year, the superintendent shall reduce the special education apportionment for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1987–88 fiscal year special education apportionment pursuant to subdivision (b), as adjusted in the 1987–88 fiscal year and fiscal years thereafter.

(e) For each county office of education that receives an apportionment pursuant to subdivision (a) in the 1986–87 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (2) of subdivision (a) in the 2001–02 fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall withhold from the special education apportionment for the average daily attendance of each affected grade level, the sum of that apportionment multiplied by the percentage of the minimum offered minutes at that grade level that the county office of education failed to offer.

SEC. 5. Section 46202 of the Education Code is amended to read:

46202. (a) Except as otherwise provided in this section, in any fiscal year, if the governing board of a school district offers less instructional time than the amount of instructional time fixed for the 1982–83 fiscal year, the Superintendent of Public Instruction shall withhold, for that fiscal year, from the district's revenue limit apportionment for the average daily attendance of each affected grade level, the sum of that apportionment multiplied by the percentage of instructional minutes fixed in the 1982–83 school year, at that grade level, that the district failed to offer.

(b) The Glendora Unified School District shall reinstate the sixth period, which shall be equivalent to at least 50 minutes of instruction, effective the start of the second semester of the 1983–84 fiscal year.

SEC. 6. Section 46206 of the Education Code is repealed.

SEC. 7. Section 46206 is added to the Education Code, to read:

46206. (a) The State Board of Education may waive the fiscal penalties set forth in this article for a school district or county office of education that fails to maintain the prescribed minimum length of time for the instructional school year, minimum number of instructional days for the school year, or both.

(b) A waiver shall only be granted pursuant to subdivision (a) upon the condition that the school or schools in which the minutes, days, or both, were lost, maintain minutes and days of instruction equal to those lost and in addition to the amount otherwise prescribed in this article for twice the number of years that it failed to maintain the prescribed minimum length of time for the instructional school year, minimum number of instructional days for the school year following the year, or both, commencing not later than the year in which the waiver was granted and continuing for each succeeding school year until the condition is satisfied. Compliance with the condition shall be specifically verified in the report of the annual audit of the school district or county office of education for each year in which the additional time is to be maintained. If an audit report for a year in which the additional

time is to be maintained does not verify that the time was provided, that finding shall be addressed as set forth in Section 41344.

(c) It is the intent of the Legislature that school districts and county offices of education make every effort to make up any instructional days and minutes lost during the school year in which the loss occurred, rather than seeking a waiver pursuant to the provisions of this section.

(d) The State Board of Education may grant a waiver pursuant to subdivision (a) without the condition provided in subdivision (b) to any school district that maintained a single session kindergarten class in the 1982–83 school year for more than the maximum number of 240 minutes permitted by state law and that, due to the school district's growth and facilities limitations, is required to operate two sessions of kindergarten per day in the same classroom.

SEC. 8. Notwithstanding any other provision of law, the Ducor Union Elementary School district is deemed to have complied with the provisions of Sections 46201 and 46202 of the Education Code for the 1997–98 fiscal year.

CHAPTER 574

An act to add Section 41344.3 to the Education Code, relating to instructional materials, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 41344.3 is added to the Education Code, to read:

41344.3. Notwithstanding subdivision (c) of Section 41344 or any other provision of law, the State Board of Education may, upon a finding that violations were minor or inadvertent and the intent of Section 60119 was substantially met, consider and act upon requests to waive Section 60119 to the extent that a failure to comply with that section would otherwise subject the school district to a repayment due to an apportionment significant audit. The board may act on requests to waive Section 60119 regardless of whether the request was received before or after the effective date of this section.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

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

In order to avoid unnecessary penalties that might otherwise be imposed on school districts, it is necessary that this act take effect immediately.

CHAPTER 575

An act to add Section 35183.5 to the Education Code, relating to pupils.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 35183.5 is added to the Education Code, to read:

35183.5. (a) Each schoolsite shall allow for outdoor use during the school day, articles of sun-protective clothing, including, but not limited to, hats.

(b) Each schoolsite may set a policy related to the type of sun-protective clothing, including, but not limited to, hats, that pupils will be allowed to use outdoors pursuant to subdivision (a). Specific clothing and hats determined by the school district or schoolsite to be gang-related or inappropriate apparel may be prohibited by the dress code policy.

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

CHAPTER 576

An act to add and repeal Section 44303 of the Education Code, relating to teachers, and making an appropriation therefor.

[Approved by Governor October 5, 2001. Filed with
Secretary of State October 7, 2001.]

I am signing Senate Bill 321, which would authorize the Los Angeles Unified School District to develop a 5 year pilot program for training newly hired teachers serving on emergency permits that are assigned to schools that have 20% or more teachers on emergency permits. However, I am deleting Section 3, which appropriates two million ($2,000,000) from the General Fund.

Supporting the appropriate training of teachers serving on emergency permits is an important step toward improving the instruction for students in hard to staff schools. Unfortunately, given the rapid decline of our economy and a budget shortfall of $1.1 billion through the first three months of this fiscal year alone, I have no choice but to oppose additional General Fund spending. However, I am directing the Office of the Secretary for Education to identify existing funds that can be used to support this pilot program.

GRAY DAVIS, Governor

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) The Los Angeles Unified School District is experiencing a shortage of qualified credentialed teachers and are compelled to hire teachers on an emergency permit basis.

(2) The effectiveness of teachers employed on an emergency permit basis would be enhanced by training them before they begin teaching.

(b) Therefore, it is the intent of the Legislature that the Los Angeles Unified School District create a 30-day pilot program to train, before they begin teaching, the teachers it hires on an emergency permit basis who will be assigned to schools that have 20 percent or more teachers on emergency permits.

SEC. 2. Section 44303 is added to the Education Code, to read:

44303. (a) From funds appropriated for that purpose, the Commission on Teacher Credentialing shall allocate funds to the Los Angeles Unified School District for purposes of implementing a pilot program as set forth in this section.

(b) From funds allocated to it for purposes of this section, the Los Angeles Unified School District may develop a 30-day training program for the teachers it hires on an emergency basis who will be assigned to schools that have 20 percent or more teachers on emergency permits. The training shall be delivered before a teacher hired on an emergency basis begins teaching. A teacher participating in this training shall spend half of the training period observing experienced fully credentialed teachers in a classroom of the same grade level as the teacher being trained.

(c) To be eligible to receive funds pursuant to this section, the Los Angeles Unified School District shall demonstrate to the satisfaction of the commission that there currently exists a shortage of fully and appropriately credentialed teachers in the district and that the program

developed by the district will train the teachers it hires on an emergency basis to become effective classroom teachers.

(d) For purposes of this section, ''experienced fully credentialed teacher'' means a teacher who holds a clear credential for the subject matter and grade level to which the teacher is assigned and has three years of teaching experience.

(e) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

(f) The Commission on Teacher Credentialing shall implement this section only to the extent that funds are specifically appropriated for the purposes of this section in the annual Budget Act or any other measure.

SEC. 3. The sum of two million dollars ($2,000,000) is hereby appropriated from the General Fund to the Commission on Teacher Credentialing for allocation to the Los Angeles Unified School District for purposes of implementing Section 44303 of the Education Code. The Commission on Teacher Credentialing may retain up to one hundred twenty-five thousand dollars ($125,000) of the funds appropriated by this section for purposes of recovering its administrative costs associated with the pilot project established pursuant to Section 44303 of the Education Code.

CHAPTER 577

An act to add Section 12019 to the Government Code, and to amend Section 50451 of, and to add Section 50455.6 to, the Health and Safety Code, relating to housing, and making an appropriation therefor.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

I am signing SB 442 which specifies that the strategy for coordinating the housing activities of state and local agencies include housing assistance for various special populations such as the elderly and the disabled communities.

Further, in light of the rapid decline of our economy and a budget shortfall of $1.1 billion through the first three months of this fiscal year alone, I have no choice but to oppose additional General Fund spending. Therefore, I am deleting Section 4 of the bill that would make a $150,000 General Fund appropriation to the Director of e-Government. The Director is authorized to do as much as he can within existing resources.

GRAY DAVIS, Governor

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

SECTION 1. Section 12019 is added to the Government Code, to read:

12019. (a) The Director of e-Government in the office of the Governor shall direct the development of, and shall make operational by July 1, 2003, an interactive Internet-based information site and inventory of all publicly assisted or publicly financed multiunit low-income rental housing in the state, where data are available. This site and inventory shall be referred to as the California Affordable Housing Connection. It is the intent of the Legislature that a technology center within a California institution of higher education develop a site and that state agencies allow access to relevant digital data for the development of the site. It is further the intent of the Legislature that the Internet site be a resource to individuals and agencies interested in locating affordable housing for low-income persons and families.

(b) The interactive site shall contain specified information on publicly assisted or financed housing, including, but not limited to, housing assisted through the United States Department of Housing and Urban Development, the United States Department of Agriculture's Rural Housing Service, the California Housing Finance Agency, the California Tax Credit Allocation Committee, the California Department of Housing and Community Development, and local housing and redevelopment agencies as data are available. The site shall be designed with the capacity to be updated by state and local housing entities as new data are available. It is the intent of the Legislature that those entities, to the extent feasible, enter new data as often as it becomes available.

(c) (1) The inventory information shall include, but not be limited to, (A) the name, address, number of units, and contact information of housing properties, and (B) subsidy program information, including program description, eligibility requirements, estimated rent levels, and application information.

(2) The information shall be organized to facilitate consumer inquiries based on geographic location and other individual or household factors. Consumer data gathered through the Internet interaction or interview process shall include, but not be limited to, the number of persons in the household, household income, heads of household and household members 62 years of age or older or with a disability, number of dependents and child care payments, family caretaking and medical expenses, the size of a desired apartment, such as efficiency or one or two bedrooms, and the city or ZIP Code for desired housing, including the opportunity to specify both urban and rural geographic preferences.

(d) The interactive site shall have the capacity to list housing options according to the degree that known program attributes match the consumer characteristics submitted to the site.

(e) To the extent that data are available, the site shall provide information on the accessibility of the housing included in the inventory.

The site shall also utilize technology that facilitates access to the site for persons with disabilities.

(f) Information on the site shall be made available in English and Spanish.

(g) The site shall have disclaimers that include, but are not limited to, all of the following:

(1) That the listing of housing programs or properties is a factual representation, and not an approval of the quality or physical characteristics of specific housing properties.

(2) That there is the potential of waiting lists for the properties and programs listed and that consumers or agencies should contact housing providers directly to inquire about availability of units.

(3) That all consumer information entered into the California Affordable Housing Connection by users shall remain confidential and shall not be used for any other purpose.

(h) The Director of e-Government shall also designate or request the technology center within a California institution of higher education chosen to develop the site to maintain and update the information contained in the inventory at least on a biannual basis, as new data become available, such as when affordable housing properties are added to California's housing stock or previous properties no longer participate in affordable housing programs. It is the intent of the Legislature that the relevant state departments cooperate with the California institution of higher education by providing existing housing data pertinent to the Internet site.

(i) After data is compiled pursuant to this section for purposes of creating and maintaining an inventory, this data shall be available to the state at no cost.

(j) Two years following commencement of the development of the site pursuant to this section, the Director of e-Government shall provide a report to the Legislature detailing the participation of agencies in the California Affordable Housing Connection and a summary of the development of the site.

SEC. 2. Section 50451 of the Health and Safety Code is amended to read:

50451. The California Statewide Housing Plan shall incorporate a statement of housing goals, policies, and objectives, as well as all of the following segments:

(a) An evaluation and summary of housing conditions throughout the state, with particular emphasis upon the availability of housing for all economic segments of the state. The evaluation shall include summary statistics for all counties, all multicounty metropolitan areas, and rural areas, as defined and designated by the Bureau of the Census of the United States Department of Commerce, rather than as defined in

Section 50101. The evaluation shall include the existing distribution of housing by type, size, gross rent, value, and, to the extent data is available, condition, and the existing distribution of households by gross income, size, and ethnic character for each of those areas.

(b) Housing development goals for the fiscal year the plan is revised and projected four additional fiscal years ahead. The goals shall be established as the minimum number of units necessary to be built or rehabilitated by the fourth subsequent fiscal year, in order to provide sufficient housing to house all residents of the state in standard, uncrowded units in suitable locations.

(c) Goals for the provision of housing assistance for the fiscal year the plan is revised and projected four additional fiscal years ahead. The goals shall be established as the minimum number of households to be assisted which will result in achieving, by the fourth subsequent fiscal year, a substantial reduction in the number of very low income households and other persons and families of low or moderate income constrained to pay more than 25 percent of their gross income for housing. Income groups to be considered in establishing the goals shall be designated by the department and shall include households a significant number of which are required to pay more than 25 percent of their gross income for housing in the fiscal year the plan is revised, as determined by the department.

(d) An identification of governmental and nongovernmental constraints and obstacles and specific recommendations for their removal.

(e) An analysis of state and local housing and building codes and their enforcement. The analysis shall include consideration of whether those codes contain sufficient flexibility to respond to new methods of construction and new materials.

(f) Recommendations for actions by federal, state, and local governments and the private sector that will contribute to the attainment of the housing goals established for California.

(g) A housing strategy that coordinates the housing assistance and activities of state and local agencies, including the provision of housing assistance for various population groups such as elderly persons, persons with disabilities, large families, families where a female is the head of the household, farmworker households, and other specific population groups as deemed appropriate by the department. To inform the strategy, the department shall, to the extent possible, do the following:

(1) Consider information compiled by the University of California pursuant to Section 9101.5 of the Welfare and Institutions Code, and from provider and consumer organizations as available.

(2) Consult with various state departments, including the California Department of Aging, the State Department of Social Services, the State

Department of Health Services, the State Department of Mental Health, the Employment Development Department, the State Department of Developmental Services, and other state departments or agencies to obtain information deemed relevant to the housing needs of populations addressed in the housing strategy. This paragraph shall not be construed to require activity beyond the customary scope of the department's planning process.

SEC. 3. Section 50455.6 is added to the Health and Safety Code, to read:

50455.6. The Legislature finds and declares that a severe shortage of affordable housing exists for low- and moderate-income households, including the elderly, disabled persons, and other special needs populations. It is the intent of the Legislature that housing designed especially for low- and moderate-income elderly, disabled persons, and other special needs populations be given due consideration in the administration of the development, preservation, and rehabilitation of housing, and other housing programs, including encouraging the inclusion of supportive services to meet the unique housing needs of these populations.

SEC. 4. The sum of one hundred fifty thousand dollars ($150,000) is hereby appropriated from the General Fund to the Director of e-Government for the purpose of meeting the requirements of Section 1 of this act. The entity that develops, operates, and maintains the Internet site pursuant to this section shall demonstrate at least a one-to-one match in the first year raised through non-State of California resources, and shall apply additional resources as needed for the completion of the project's development. This entity shall also produce a resource development plan for sustaining the site and securing resources for making information on the site available in additional languages, including, but not limited to, Chinese. The funds appropriated by this section shall only be used for direct staffing, hardware, and other direct project costs, but not for administrative overhead.

CHAPTER 578

An act to amend Section 25249.7 of the Health and Safety Code, relating to the environment.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 25249.7 of the Health and Safety Code is amended to read:

25249.7. (a) Any person that violates or threatens to violate Section 25249.5 or 25249.6 may be enjoined in any court of competent jurisdiction.

(b) (1) Any person who has violated Section 25249.5 or 25249.6 shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per day for each violation in addition to any other penalty established by law. That civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of a civil penalty for a violation of this chapter, the court shall consider all of the following:

(A) The nature and extent of the violation.

(B) The number of, and severity of, the violations.

(C) The economic effect of the penalty on the violator.

(D) Whether the violator took good faith measures to comply with this chapter and the time these measures were taken.

(E) The willfulness of the violator's misconduct.

(F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(G) Any other factor that justice may require.

(c) Actions pursuant to this section may be brought by the Attorney General in the name of the people of the State of California, by any district attorney, by any city attorney of a city having a population in excess of 750,000, or, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor, or as provided in subdivision (d).

(d) Actions pursuant to this section may be brought by any person in the public interest if both of the following requirements are met:

(1) The private action is commenced more than 60 days from the date that the person has given notice of an alleged violation of Section 25249.5 or 25249.6 that is the subject of the private action to the Attorney General and the district attorney, city attorney, or prosecutor in whose jurisdiction the violation is alleged to have occurred, and to the alleged violator. If the notice alleges a violation of Section 25249.6, the notice of the alleged violation shall include a certificate of merit executed by the attorney for the noticing party, or by the noticing party, if the noticing party is not represented by an attorney. The certificate of merit shall state that the person executing the certificate has consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action, and that,

based on that information, the person executing the certificate believes there is a reasonable and meritorious case for the private action. Factual information sufficient to establish the basis of the certificate of merit, including the information identified in paragraph (2) of subdivision (h), shall be attached to the certificate of merit that is served on the Attorney General.

(2) Neither the Attorney General, any district attorney, any city attorney, nor any prosecutor has commenced and is diligently prosecuting an action against the violation.

(e) Any person bringing an action in the public interest pursuant to subdivision (d) and any person filing any action in which a violation of this chapter is alleged shall notify the Attorney General that the action has been filed. Neither this subdivision nor the procedures provided in subdivisions (f) to (j), inclusive, shall affect the requirements imposed by statute or a court decision in existence on the effective date of the act amending this section during the 2001–02 Regular Session concerning whether any person filing any action in which a violation of this chapter is alleged is required to comply with the requirements of subdivision (d).

(f) (1) Any person filing an action in the public interest pursuant to subdivision (d) or any private person filing any action in which a violation of this chapter is alleged, shall, after the action or violation is subject either to a settlement or to a judgment, submit to the Attorney General a reporting form that includes the results of that settlement or judgment and the final disposition of the case, even if dismissed. At the time of the filing of any judgment pursuant to an action brought in the public interest pursuant to subdivision (d), or any action brought by a private person in which a violation of this chapter is alleged, the plaintiff shall file an affidavit verifying that the report required by this subdivision has been accurately completed and submitted to the Attorney General.

(2) Any person bringing an action in the public interest pursuant to subdivision (d), or any private person bringing an action in which a violation of this chapter is alleged, shall, after the action is either subject to a settlement, with or without court approval, or to a judgment, submit to the Attorney General a report that includes information on any corrective action being taken as a part of the settlement or resolution of the action.

(3) The Attorney General shall develop a reporting form that specifies the information that shall be reported, including, but not limited to, for purposes of subdivision (e), the date the action was filed, the nature of the relief sought, and for purposes of this subdivision, the amount of the settlement or civil penalty assessed, other financial terms of the settlement, and any other information the Attorney General deems appropriate.

(4) If there is a settlement of an action brought by a person in the public interest under subdivision (d), the plaintiff shall submit the settlement, other than a voluntary dismissal in which no consideration is received from the defendant, to the court for approval upon noticed motion, and the court may approve the settlement only if the court makes all of the following findings:

(A) Any warning that is required by the settlement complies with this chapter.

(B) Any award of attorney's fees is reasonable under California law.

(C) Any penalty amount is reasonable based on the criteria set forth in paragraph (2) of subdivision (b).

(5) The plaintiff subject to paragraph (4) has the burden of producing evidence sufficient to sustain each required finding. The plaintiff shall serve the motion and all supporting papers on the Attorney General, who may appear and participate in any proceeding without intervening in the case.

(6) Neither this subdivision nor the procedures provided in subdivision (e) and subdivisions (g) to (j), inclusive, shall affect the requirements imposed by statute or a court decision in existence on the effective date of the act amending this section during the 2001–02 Regular Session concerning whether claims raised by any person or public prosecutor not a party to the action are precluded by a settlement approved by the court.

(g) The Attorney General shall maintain a record of the information submitted pursuant to subdivisions (e) and (f) and shall make this information available to the public.

(h) (1) Except as provided in paragraph (2), the basis for the certificate of merit required by subdivision (d) is not discoverable. However, nothing in this subdivision shall preclude the discovery of information related to the certificate of merit if that information is relevant to the subject matter of the action and is otherwise discoverable, solely on the ground that it was used in support of the certificate of merit.

(2) Upon the conclusion of an action brought pursuant to subdivision (d) with respect to any defendant, if the trial court determines that there was no actual or threatened exposure to a listed chemical, the court may, upon the motion of that alleged violator or upon the court's own motion, review the basis for the belief of the person executing the certificate of merit, expressed in the certificate of merit, that an exposure to a listed chemical had occurred or was threatened. The information in the certificate of merit, including the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other data reviewed by those persons, shall be disclosed to the court in an in-camera proceeding at which the moving party shall not be present. If the court finds that there was no credible factual basis for the certifier's belief that

an exposure to a listed chemical had occurred or was threatened, then the action shall be deemed frivolous within the meaning of Section 128.5 of the Code of Civil Procedure. The court shall not find a factual basis credible on the basis of a legal theory of liability that is frivolous within the meaning of Section 128.5 of the Code of Civil Procedure.

(i) The Attorney General may provide the factual information submitted to establish the basis of the certificate of merit on request to any district attorney, city attorney, or prosecutor within whose jurisdiction the violation is alleged to have occurred, or to any other state or federal government agency, but in all other respects the Attorney General shall maintain, and ensure that all recipients maintain, the submitted information as confidential official information to the full extent authorized in Section 1040 of the Evidence Code.

(j) In any action brought by the Attorney General, a district attorney, a city attorney, or a prosecutor pursuant to this chapter, the Attorney General, district attorney, city attorney, or prosecutor may seek and recover costs and attorney's fees on behalf of any party who provides a notice pursuant to subdivision (d) and who renders assistance in that action.

SEC. 2. The Legislature hereby finds and declares that Section 1 of this act furthers the purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986.

CHAPTER 579

An act to add Section 11161.2 to the Penal Code, relating to domestic violence and elder and dependent adult abuse and neglect, and making an appropriation therefor.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

I am signing Senate Bill 502, however, I am vetoing Section 2 of the bill which would appropriate $100,000 from the General Fund.

This bill would require the Office of Criminal Justice Planning (OCJP) to establish medical forms, instructions, and examination protocol for victims of domestic violence and elder and dependent adult abuse and neglect, using specified guidelines, in cooperation with specified state and local entities.

Given the rapid decline of our economy and a budget shortfall of $1.1 billion through the first three months of this fiscal year alone, I have no choice but to oppose additional General Fund Spending. Therefore, I am vetoing Section 2 of the bill that would appropriate $100,000 from the General Fund to the Office of Criminal Justice Planning (OCJP) in order to implement the provisions of this bill.

I am directing the OCJP to implement the provisions of this measure within their existing resources.

GRAY DAVIS, Governor

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

SECTION 1. Section 11161.2 is added to the Penal Code, to read:

11161.2. (a) The Legislature finds and declares that adequate protection of victims of domestic violence and elder and dependent adult abuse has been hampered by lack of consistent and comprehensive medical examinations. Enhancing examination procedures, documentation, and evidence collection will improve investigation and prosecution efforts.

(b) On or before January 1, 2003, the Office of Criminal Justice Planning shall, in cooperation with the State Department of Health Services, the Department of Aging and the ombudsman program, the State Department of Social Services, law enforcement agencies, the Department of Justice, the California Association of Crime Lab Directors, the California District Attorneys Association, the California State Sheriff's Association, the California Medical Association, the California Police Chiefs' Association, domestic violence advocates, the California Medical Training Center, adult protective services, and other appropriate experts:

(1) Establish medical forensic forms, instructions, and examination protocol for victims of domestic violence and elder and dependent adult abuse and neglect using as a model the form and guidelines developed pursuant to Section 13823.5. The form should include, but not be limited to, a place for a notation concerning each of the following:

(A) Notification of injuries and a report of suspected domestic violence or elder or dependent adult abuse and neglect to law enforcement authorities, Adult Protective Services, or the State Long-Term Care Ombudsmen, in accordance with existing reporting procedures.

(B) Obtaining consent for the examination, treatment of injuries, collection of evidence, and photographing of injuries. Consent to treatment shall be obtained in accordance with the usual hospital policy. A victim shall be informed that he or she may refuse to consent to an examination for evidence of domestic violence and elder and dependent adult abuse and neglect, including the collection of physical evidence, but that refusal is not a ground for denial of treatment of injuries and disease, if the person wishes to obtain treatment and consents thereto.

(C) Taking a patient history of domestic violence or elder or dependent adult abuse and neglect and other relevant medical history.

(D) Performance of the physical examination for evidence of domestic violence or elder or dependent adult abuse and neglect.

(E) Collection of physical evidence of domestic violence or elder or dependent adult abuse.

(F) Collection of other medical and forensic specimens, as indicated.

(G) Procedures for the preservation and disposition of evidence.

(H) Complete documentation of medical forensic exam findings.

(2) Determine whether it is appropriate and forensically sound to develop separate or joint forms for documentation of medical forensic findings for victims of domestic violence and elder and dependent adult abuse and neglect.

(3) The forms shall become part of the patient's medical record pursuant to guidelines established by the Office of Criminal Justice Planning advisory committee and subject to the confidentiality laws pertaining to release of medical forensic examination records.

(c) The forms shall be made accessible for use on the Internet.

SEC. 2. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the Office of Criminal Justice Planning to carry out the purposes of this act. The office may use up to 3 percent of the funds appropriated for administration of the program.

CHAPTER 580

An act to amend Section 66903 of the Education Code, relating to postsecondary education.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

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

(a) The California Postsecondary Education Commission estimates that 714,000 more Californians will seek public higher education in the next 10 years, known as ''Title Wave II.''

(b) New facilities will be needed to accommodate the expanded student population.

(c) The joint use of facilities would make efficient use of bond funds and other capital outlay funds.

(d) The Legislature has supported coordination of coursework and requirements so that students can transfer between the segments of higher education, including dual enrollment.

(e) Several campuses in the state offer space for construction of facilities that could serve more than one higher education segment.

SEC. 2. Section 66903 of the Education Code is amended to read:

66903. The commission has the following functions and responsibilities in its capacity as the statewide postsecondary education planning and coordinating agency and adviser to the Legislature and the Governor:

(a) It shall require the governing boards of the segments of public postsecondary education to develop and submit to the commission institutional and systemwide long-range plans in a form determined by the commission after consultation with the segments.

(b) It shall prepare a state plan for postsecondary education that shall integrate the planning efforts of the public segments with other pertinent plans. The commission shall seek to resolve conflicts or inconsistencies among segmental plans in consultation with the segments. If these consultations are unsuccessful, the commission shall report the unresolved issues to the Legislature with recommendations for resolution. In developing the plan, the commission shall consider at least the following factors:

(1) The need for, and location of, new facilities.

(2) The range and kinds of programs appropriate to each institution or system.

(3) The budgetary priorities of the institutions and systems of postsecondary education.

(4) The impact of various types and levels of student charges on students and on postsecondary education programs and institutions.

(5) The appropriate levels of state-funded student financial aid.

(6) The access and admission of students to postsecondary education.

(7) The educational programs and resources of independent and private postsecondary institutions.

(8) The provisions of this division differentiating the functions of the public systems of higher education.

(c) It shall update the plan periodically, as appropriate.

(d) It shall participate in appropriate stages of the executive and the legislative budget processes as requested by the executive and the legislative branches, and shall advise the executive and the legislative branches as to whether segmental programmatic budgetary requests are compatible with the state plan. It is not intended that the commission hold independent budget hearings.

(e) It shall advise the Legislature and the Governor regarding the need for, and location of, new institutions and campuses of public higher education.

(f) It shall review proposals by the public segments for new programs, the priorities that guide them, and the degree of coordination with nearby public, independent, and private postsecondary educational institutions,

and shall make recommendations regarding those proposals to the Legislature and the Governor.

(g) In consultation with the public segments, it shall establish a schedule for segmental review of selected educational programs, evaluate the program approval, review, and disestablishment processes of the segments, and report its findings and recommendations to the Legislature and the Governor.

(h) It shall serve as a stimulus to the segments and institutions of postsecondary education by projecting and identifying societal and educational needs and encouraging adaptability to change.

(i) It shall periodically collect or conduct, or both collect and conduct, studies of projected manpower supply and demand, in cooperation with appropriate state agencies, and disseminate the results of those studies to institutions of postsecondary education and to the public in order to improve the information base upon which student choices are made.

(j) It shall periodically review and make recommendations concerning the need for, and availability of, postsecondary programs for adult and continuing education.

(k) It shall develop criteria for evaluating the effectiveness of all aspects of postsecondary education.

(*l*) It shall maintain and update annually an inventory of all off-campus programs and facilities for education, research, and community services operated by public and independent institutions of postsecondary education.

(m) (1) It shall act as a clearinghouse for postsecondary education information and as a primary source of information for the Legislature, the Governor, and other agencies. It shall develop and maintain a comprehensive data base that does all of the following:

(A) Ensures comparability of data from diverse sources.

(B) Supports longitudinal studies of individual students as they progress through the state's postsecondary educational institutions, based upon the commission's existing student data base through the use of a unique student identifier.

(C) Is compatible with the California School Information System and the student information systems developed and maintained by the public segments of higher education, as appropriate.

(D) Provides Internet access to data, as appropriate, to the sectors of higher education.

(E) Provides each of the educational segments access to the data made available to the commission for the purposes of the data base, in order to support, most efficiently and effectively, statewide, segmental, and individual campus educational research information needs.

(2) The commission, in implementing paragraph (1), shall comply with the federal Family Educational Rights and Privacy Act of 1974 (20

U.S.C. Sec. 1232g) relating to the disclosure of personally identifiable information concerning students.

(3) The commission may not make available any personally identifiable information received from a postsecondary educational institution concerning students for any regulatory purpose unless the institution has authorized the commission to provide that information on behalf of the institution.

(4) The commission shall provide 30-day notification to the chairpersons of the appropriate legislative policy and budget committees of the Legislature, to the Director of Finance, and to the Governor prior to making any significant changes to the student information contained in the data base.

(n) It shall establish criteria for state support of new and existing programs, in consultation with the public segments, the Department of Finance, and the Joint Legislative Budget Committee.

(o) It shall comply with the appropriate provisions of the federal Education Amendments of 1972 (P.L. 92-318), as specified in Section 67000.

(p) It shall consider the relationship among academic education and vocational education and job training programs, and shall actively consult with representatives of public and private education.

(q) It shall review all proposals for changes in eligibility pools for admission to public institutions and segments of postsecondary education and shall make recommendations to the Legislature, the Governor, and institutions of postsecondary education.

(r) It shall report periodically to the Legislature and the Governor regarding the financial conditions of independent institutions, their enrollment and application figures, the number of student spaces available, and the respective cost of utilizing those spaces as compared to providing additional public spaces. The reports shall include recommendations concerning state policies and programs having a significant impact on independent institutions.

(s) Upon request of the Legislature or the Governor, it shall submit to the Legislature and the Governor a report on all matters so requested that are compatible with its role as the statewide postsecondary education planning and coordinating agency. Upon request of individual Members of the Legislature or personnel in the executive branch, the commission shall submit information or a report on any matter to the extent that sufficient resources are available. From time to time, it also may submit to the Legislature and the Governor a report that contains recommendations as to necessary or desirable changes, if any, in the functions, policies, and programs of the several segments of public, independent, and private postsecondary education.

(t) In consultation with the public segments, it shall consider the development of facilities to be used by more than one segment of public higher education, commonly called ''joint-use facilities.'' It shall recommend to the Legislature criteria and processes for different segments to utilize bond funds for these intersegmental, joint-use facilities.

(u) It may undertake other functions and responsibilities that are compatible with its role as the statewide postsecondary education planning and coordinating agency.

SEC. 3. Section 66903 of the Education Code is amended to read:

66903. The commission has the following functions and responsibilities in its capacity as the statewide postsecondary education planning and coordinating agency and adviser to the Legislature and the Governor:

(a) It shall require the governing boards of the segments of public postsecondary education to develop and submit to the commission institutional and systemwide long-range plans in a form determined by the commission after consultation with the segments.

(b) It shall prepare a state plan for postsecondary education that shall integrate the planning efforts of the public segments with other pertinent plans. The commission shall seek to resolve conflicts or inconsistencies among segmental plans in consultation with the segments. If these consultations are unsuccessful, the commission shall report the unresolved issues to the Legislature with recommendations for resolution. In developing the plan, the commission shall consider at least the following factors:

(1) The need for, and location of, new facilities.

(2) The range and kinds of programs appropriate to each institution or system.

(3) The budgetary priorities of the institutions and systems of postsecondary education.

(4) The impact of various types and levels of student charges on students and on postsecondary education programs and institutions.

(5) The appropriate levels of state-funded student financial aid.

(6) The access and admission of students to postsecondary education.

(7) The educational programs and resources of independent and private postsecondary institutions.

(8) The provisions of this division differentiating the functions of the public systems of higher education.

(c) It shall update the plan periodically, as appropriate.

(d) It shall participate in appropriate stages of the executive and the legislative budget processes as requested by the executive and the legislative branches, and shall advise the executive and the legislative branches as to whether segmental programmatic budgetary requests are

compatible with the state plan. It is not intended that the commission hold independent budget hearings.

(e) It shall advise the Legislature and the Governor regarding the need for, and location of, new institutions and campuses of public higher education.

(f) It shall review proposals by the public segments for new programs, the priorities that guide them, and the degree of coordination with nearby public, independent, and private postsecondary educational institutions, and shall make recommendations regarding those proposals to the Legislature and the Governor.

(g) In consultation with the public segments, it shall establish a schedule for segmental review of selected educational programs, evaluate the program approval, review, and disestablishment processes of the segments, and report its findings and recommendations to the Legislature and the Governor.

(h) It shall serve as a stimulus to the segments and institutions of postsecondary education by projecting and identifying societal and educational needs and encouraging adaptability to change.

(i) It shall periodically collect or conduct, or both collect and conduct, studies of projected manpower supply and demand, in cooperation with appropriate state agencies, and disseminate the results of those studies to institutions of postsecondary education and to the public in order to improve the information base upon which student choices are made.

(j) It shall periodically review and make recommendations concerning the need for, and availability of, postsecondary programs for adult and continuing education.

(k) It shall develop criteria for evaluating the effectiveness of all aspects of postsecondary education.

(*l*) It shall maintain and update annually an inventory of all off-campus programs and facilities for education, research, and community services operated by public and independent institutions of postsecondary education.

(m) (1) It shall act as a clearinghouse for postsecondary education information and as a primary source of information for the Legislature, the Governor, and other agencies. It shall develop and maintain a comprehensive data base that does all of the following:

(A) Ensures comparability of data from diverse sources.

(B) Supports longitudinal studies of individual students as they progress through the state's postsecondary educational institutions, based upon the commission's existing student data base through the use of a unique student identifier.

(C) Is compatible with the California School Information System and the student information systems developed and maintained by the public segments of higher education, as appropriate.

(D) Provides Internet access to data, as appropriate, to the sectors of higher education.

(E) Provides each of the educational segments access to the data made available to the commission for the purposes of the data base, in order to support, most efficiently and effectively, statewide, segmental, and individual campus educational research information needs.

(2) The commission, in implementing paragraph (1), shall comply with the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) relating to the disclosure of personally identifiable information concerning students.

(3) The commission may not make available any personally identifiable information received from a postsecondary educational institution concerning students for any regulatory purpose unless the institution has authorized the commission to provide that information on behalf of the institution.

(4) The commission shall provide 30-day notification to the chairpersons of the appropriate legislative policy and budget committees of the Legislature, to the Director of Finance, and to the Governor prior to making any significant changes to the student information contained in the data base.

(n) It shall establish criteria for state support of new and existing programs, in consultation with the public segments, the Department of Finance, and the Joint Legislative Budget Committee.

(o) It shall comply with the appropriate provisions of the federal Education Amendments of 1972 (P.L. 92-318), as specified in Section 67000.

(p) It shall consider the relationship among academic education and vocational education and job training programs, and shall actively consult with representatives of public and private education.

(q) It shall review all proposals for changes in eligibility pools for admission to public institutions and segments of postsecondary education and shall make recommendations to the Legislature, the Governor, and institutions of postsecondary education. In carrying out this subdivision, the commission periodically shall conduct a study of the percentages of California public high school graduates estimated to be eligible for admission to the University of California and the California State University. The changes made to this subdivision during the 2001–02 Regular Session of the Legislature shall be implemented only during those fiscal years for which funding is provided for the purposes of those provisions in the annual Budget Act or in another measure.

(r) It shall report periodically to the Legislature and the Governor regarding the financial conditions of independent institutions, their enrollment and application figures, the number of student spaces

available, and the respective cost of utilizing those spaces as compared to providing additional public spaces. The reports shall include recommendations concerning state policies and programs having a significant impact on independent institutions.

(s) Upon request of the Legislature or the Governor, it shall submit to the Legislature and the Governor a report on all matters so requested that are compatible with its role as the statewide postsecondary education planning and coordinating agency. Upon request of individual Members of the Legislature or personnel in the executive branch, the commission shall submit information or a report on any matter to the extent that sufficient resources are available. From time to time, it also may submit to the Legislature and the Governor a report that contains recommendations as to necessary or desirable changes, if any, in the functions, policies, and programs of the several segments of public, independent, and private postsecondary education.

(t) In consultation with the public segments, it shall consider the development of facilities to be used by more than one segment of public higher education, commonly called ''joint-use facilities.'' It shall recommend to the Legislature criteria and processes for different segments to utilize bond funds for these intersegmental, joint-use facilities.

(u) It may undertake other functions and responsibilities that are compatible with its role as the statewide postsecondary education planning and coordinating agency.

SEC. 4. Section 3 of this bill incorporates amendments to Section 66903 of the Education Code proposed by both this bill and AB 1721. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 66903 of the Education Code, and (3) this bill is enacted after AB 1721, in which case Section 2 of this bill shall not become operative.

CHAPTER 581

An act to amend Section 27316 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. The Legislature hereby finds and declares that legislation necessary to implement specific performance standards

adopted by the National Highway Transportation Safety Administration relating to school bus occupant protection systems should be enacted as those standards become available.

SEC. 2. Section 27316 of the Vehicle Code is amended to read:

27316. (a) Unless specifically prohibited by the National Highway Transportation Safety Administration, all schoolbuses purchased or leased for use in California shall be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system, if the schoolbus is either of the following:

(1) Type 1, as defined in paragraph (1) of subdivision (b) of Section 1201 of Title 13 of the California Code of Regulations, and is manufactured on or after July 1, 2005.

(2) Type 2, as defined in paragraph (2) of subdivision (b) of Section 1201 of Title 13 of the California Code of Regulations, and is manufactured on or after July 1, 2004.

(b) For purposes of this section, a ''passenger restraint system'' means any of the following:

(1) A restraint system that is in compliance with Federal Motor Vehicle Safety Standard 209, for a type 2 seatbelt assembly, and with Federal Motor Vehicle Safety Standard 210, as those standards were in effect on the date the schoolbus was manufactured.

(2) A restraint system certified by the schoolbus manufacturer that is in compliance with Federal Motor Vehicle Safety Standard 222 and incorporates a type 2 lap/shoulder restraint system.

(c) No person, school district, or organization, with respect to a schoolbus equipped with passenger restraint systems pursuant to this section, may be charged for a violation of this code or any regulation adopted thereunder requiring a passenger to use a passenger restraint system, if a passenger on the schoolbus fails to use or improperly uses the passenger restraint system.

(d) It is the intent of the Legislature, in implementing this section, that school pupil transportation providers work to prioritize the allocation of schoolbuses purchased, leased, or contracted for on or after July 1, 2004, for type 2 schoolbuses, or on or after July 1, 2005, for type 1 schoolbuses, to ensure that elementary level schoolbus passengers receive first priority for new schoolbuses whenever feasible.

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.

CHAPTER 582

An act to amend Section 25503.6 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 25503.6 of the Business and Professions Code is amended to read:

25503.6. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, or a distilled spirits manufacturer, or distilled spirits manufacturer's agent may purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(1) The on-sale licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner of any of the following:

(A) An outdoor stadium or a fully enclosed arena with a fixed seating capacity in excess of 10,000 seats located in Sacramento County.

(B) A fully enclosed arena with a fixed seating capacity in excess of 18,000 seats located in Orange County or Los Angeles County.

(C) An outdoor stadium or fully enclosed arena with a fixed seating capacity in excess of 8,500 seats located in Kern County.

(D) An exposition park of not less than 50 acres that includes an outdoor stadium with a fixed seating capacity in excess of 8,000 seats and a fully enclosed arena with an attendance capacity in excess of 4,500 people, located in San Bernardino County.

(E) An outdoor stadium with a fixed seating capacity in excess of 10,000 seats located in Yolo County.

(F) An outdoor stadium and a fully enclosed arena with fixed seating capacities in excess of 10,000 seats located in Fresno County.

(G) An athletic and entertainment complex of not less than 50 acres that includes within its boundaries an outdoor stadium with a fixed seating capacity of at least 8,000 seats and a second outdoor stadium with a fixed seating capacity of at least 3,500 seats located within Riverside County.

(2) The outdoor stadium or fully enclosed arena described in paragraph (1) is not owned by a community college district.

(3) The advertising space or time is purchased only in connection with the events to be held on the premises of the stadium or arena owned by the on-sale licensee.

(4) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced by the winegrower, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits manufacturer or distilled spirits manufacturer's agent that purchased the advertising space or time.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer, the holder of the winegrower's license, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent and the on-sale licensee.

(c) Any beer manufacturer or holder of a winegrower's license, any distilled spirits manufacturer, or any distilled spirits manufacturer's agent who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill all or part of those contractual obligations entered into pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space, time, or costs involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, a holder of a winegrower's license, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(e) For the purposes of this section, ''beer manufacturer'' includes any holder of a beer manufacturer's license, any holder of an out-of-state

beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

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.

CHAPTER 583

An act to amend Sections 790.034 and 2071 of, and to add Sections 790.031, 2071.1, and 10082.3 to, the Insurance Code, relating to insurance.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Existing legal protections for insurance policyholders proved to be inadequate after the Northridge earthquake. The public requires additional safeguards against unfair claim settlement practices by insurance companies. It is the intent of the Legislature that the provisions of this act add basic consumer protections to those currently set forth in the Insurance Code and supporting regulations. It is also the intent of the Legislature that the provisions of this act apply to all residential property insurance policies sold in the state, including, but not limited to, residential fire insurance policies, residential property insurance policies, basic residential earthquake insurance policies, and policies issued by the California Earthquake Authority.

SEC. 2. Section 790.031 is added to the Insurance Code, to read:

790.031. The requirements of subdivision (b) of Section 790.034, and Sections 2071.1 and 10082.3 shall apply only to policies of residential property insurance as defined in Section 10087, policies and endorsements containing those coverages prescribed in Chapter 8.5 (commencing with Section 10081) of Part 1 of Division 2, policies issued by the California Earthquake Authority pursuant to Chapter 8.6 (commencing with Section 10089.5) of Part 1 of Division 2, policies and endorsements that insure against property damage and are issued to common interest developments or to associations managing common

interest developments, as those terms are defined in Section 1351 of the Civil Code, and to policies issued pursuant to Section 120 that insure against property damage to residential units or contents thereof owned by one or more persons located in this state.

SEC. 3. Section 790.034 of the Insurance Code is amended to read:

790.034. (a) Regulations adopted by the commissioner pursuant to this article that relate to the settlement of claims shall take into consideration settlement practices by classes of insurers.

(b) (1) Upon receiving notice of a claim, every insurer shall immediately, but no more than 15 calendar days after receipt of the claim, provide the insured with a legible reproduction of Section 790.03 of the Insurance Code, in at least 12-point type and a written notice containing the following:

''In addition to Section 790.03 of the Insurance Code provided here, Fair Claims Settlement Practices Regulations govern how insurance claims must be processed in this state. These regulations are available at the Department of Insurance Internet site, www.insurance.ca.gov. You may also obtain a copy of these regulations free of charge from this insurer.''

(2) Every insurer shall provide, whether requested orally or in writing by an insured, a copy of the Fair Claims Settlement Practices Regulations as set forth in Sections 2695.5, 2695.7, 2695.8, and 2695.9 of subchapter 7.5 of Chapter 5 of Title 10 of the California Code of Regulations, unless the regulations are inapplicable to that class of insurer. These regulations shall be provided to the insured within 15 calendar days of request.

(3) The provisions of this subdivision shall apply to all insurers except for those that are licensed pursuant to Chapter 1 (commencing with Section 12340) of Part 6 of Division 2, with respect to policies and endorsements described in Section 790.031.

SEC. 4. Section 2071 of the Insurance Code is amended to read:

2071. (a) The following is adopted as the standard form of fire insurance policy for this state:

California Standard Form Fire Insurance Policy

No.

[Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy.]

[Space for listing amounts of insurance, rates and premiums for the basic coverages insured under the standard form of policy and for additional coverages or perils insured under endorsements attached.]

In consideration of the provisions and stipulations herein or added hereto and of ____ dollars premium this company, for the term of

_____

from the _____ day of _____ , 20___ } At 12:01 a.m.,
to the _____ day of _____ , 20___ } standard time,

at location of property involved, to an amount not exceeding ____ dollars, does insure ____ and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with any other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

IN WITNESS WHEREOF, this company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized agent of this company at

Secretary. President.

Countersigned this _____ day of _____ , 20 __

_____ Agent

Concealment, fraud

This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property

This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

Perils not included

This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that the fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this company be liable for loss by theft.

Other insurance

Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance

Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring (a) while the hazard is increased by any means within the control or knowledge of the insured; or (b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of 60 consecutive days; or (c) as a result of explosion or riot, unless fire ensues, and in that event for loss by fire only.

Other perils or subjects

Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

Added provisions

The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy or by statute is subject to change.

Waiver provisions

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

Cancellation of policy

This policy shall be canceled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by this company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

Mortgagee interests and obligations

If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, the interest in this policy may be canceled by giving to the mortgagee a 10 days' written notice of cancellation.

If the insured fails to render proof of loss the mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty (60) days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests

and obligations of the mortgagee may be added hereto by agreement in writing.

Pro rata liability

This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs

The insured shall give written notice to this company of any loss without unnecessary delay, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within 60 days after the loss, unless the time is extended in writing by this company, the insured shall render to this company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required and obtainable, verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

The insured, as often as may be reasonably required and subject to the provisions of Section 2071.1, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as may be reasonably required, shall produce for examinations all books of account, bills, invoices, and other vouchers, or certified copies thereof if the originals be lost, at any reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made. The insurer shall inform the insured that tax returns

are privileged against disclosure under applicable law but may be necessary to process or determine the claim.

The insurer shall notify every claimant that they may obtain, upon request, copies of claim-related documents. For purposes of this section, ''claim-related documents'' means all documents that relate to the evaluation of damages, including, but not limited to, repair and replacement estimates and bids, appraisals, scopes of loss, drawings, plans, reports, third party findings on the amount of loss, covered damages, and cost of repairs, and all other valuation, measurement, and loss adjustment calculations of the amount of loss, covered damage, and cost of repairs. However, attorney work product and attorney-client privileged documents, and documents that indicate fraud by the insured or that contain medically privileged information, are excluded from the documents an insurer is required to provide pursuant to this section to a claimant. Within 15 calendar days after receiving a request from an insured for claim-related documents, the insurer shall provide the insured with copies of all claim-related documents, except those excluded by this section. Nothing in this section shall be construed to affect existing litigation discovery rights.

Appraisal

In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written request of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of the request. Where the request is accepted, the appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon the umpire, then, on request of the insured or this company, the umpire shall be selected by a judge of a court of record in the state in which the property covered is located. Appraisal proceedings are informal unless the insured and this company mutually agree otherwise. For purposes of this section, ''informal'' means that no formal discovery shall be conducted, including depositions, interrogatories, requests for admission, or other forms of formal civil discovery, no formal rules of evidence shall be applied, and no court reporter shall be used for the proceedings. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by the parties equally. In the event of a government-declared disaster, as

defined in the Government Code, appraisal may be requested by either the insured or this company but shall not be compelled.

Adjusters

If, within a six-month period, the company assigns a third or subsequent adjuster to be primarily responsible for a claim, the insurer, in a timely manner, shall provide the insured with a written status report. For purposes of this section, a written status report shall include a summary of any decisions or actions that are substantially related to the disposition of a claim, including, but not limited to, the amount of losses to structures or contents, the retention or consultation of design or construction professionals, the amount of coverage for losses to structures or contents and all items of dispute.

Company's options

It shall be optional with this company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.

Abandonment

There can be no abandonment to this company of any property.

When loss payable

The amount of loss for which this company may be liable shall be payable 60 days after proof of loss, as herein provided, is received by this company and ascertainment of the loss is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

Suit

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after inception of the loss.

Subrogation

This company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company.

(b) Any amendments to this section by the enactment of Senate Bill 658 of the 2001–02 Regular Session shall govern a policy utilizing the form provided in subdivision (a) when that policy is originated or renewed on and after January 1, 2002.

SEC. 5. Section 2071.1 is added to the Insurance Code, to read:

2071.1. (a) This section applies to an examination of an insured under oath pursuant to Section 2071 labeled ''Requirements in case loss occurs'' and other relevant provisions of that section, and to any policy that insures property and contains a provision for examining an insured under oath, when the policy is originated or renewed on and after January 1, 2002.

The following are among the rights of each insured who is requested to submit to an examination under oath:

(1) An insurer that determines that it will conduct an examination under oath of an insured shall notify the insured of that determination and shall include a copy of this section in the notification.

(2) An insurer may conduct an examination under oath only to obtain information that is relevant and reasonably necessary to process or investigate the claim.

(3) An examination under oath may only be conducted upon reasonable notice, at a reasonably convenient place and for a reasonable length of time.

(4) The insured may be represented by counsel and may record the examination proceedings in their entirety.

(5) The insurer shall notify the insured that, upon request and free of charge, it will provide the insured with a copy of the transcript of the proceedings and a tape of the proceedings, if one exists. Where an insured requests a copy of the transcript, the tape, or both, of their examination under oath, the insurer shall provide it within 10 business days of receipt by the insurer or its counsel of the transcript, the tape, or both. An insured may make sworn corrections to the transcript so it accurately reflects the testimony under oath.

(6) In an examination under oath, an insured may assert any objection that can be made in a deposition under state or federal law. However, if as a result of asserting an objection an insured fails to provide an answer to a material question, and that failure prevents the insurer from being able to determine the extent of loss and validity of the claim, the rights of the insured under the contract may be affected.

(7) An insured who submits a fraudulent claim may be subject to all criminal and civil penalties applicable under law.

(b) The department shall conduct a study quantifying the number of examinations under oath performed by carriers regulated by the department and the number of contacts made by consumers regarding alleged concerns with the utilization of the examination under oath process for the resolution of pending claims. The department shall report both the number of examinations under oath performed by each carrier and the number of justified and unjustified claims alleged by insureds as defined in the Insurance Code. To the best extent practicable, the department shall also determine if any of these complaints also resulted in suspected fraudulent claims with the department's fraud division.

(c) The department shall also survey licensed carriers as to the number of suspected fraudulent claims under residential property insurance policies that are submitted to the department's fraud division as required by law, and that resulted, or eventually resulted, in the utilization of the examination under oath process. Policies of residential property insurance shall be as defined in Section 10087.

(d) The department shall submit the findings of this report to the Chairs of the Assembly and Senate Committees on Insurance no later than March 1, 2003.

SEC. 6. Section 10082.3 is added to the Insurance Code, to read:

10082.3. Notwithstanding any other provision of law, the following provisions regarding loss requirements, appraisals, and adjusters shall apply to the following types of policies originated or renewed on and after January 1, 2002: all policies of residential property insurance, as defined in Section 10087, all policies, endorsements, or certificates of insurance providing coverage for loss or damage caused by the peril of earthquake issued pursuant to this chapter; and all policies of basic residential earthquake insurance issued pursuant to Chapter 8.6 (commencing with Section 10089.5).

Requirements in case loss occurs

The insured shall give written notice to this company of any loss without unnecessary delay, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within 60 days after the loss, unless the time is extended in writing by this company, the insured shall render to this company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest

of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required and obtainable, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required and subject to the provisions of Section 2071.1, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made. The insurer shall inform the insured that tax returns are privileged against disclosure under applicable state law but may be necessary to process or determine the claim.

The insurer shall notify every claimant that they may obtain, upon request, copies of claim-related documents. For purposes of this section, ''claim-related documents'' means all documents that relate to the evaluation of damages, including, but not limited to, repair and replacement estimates and bids, appraisals, scopes of loss, drawings, plans, reports, third party findings on the amount of loss, covered damages, and cost of repairs, and all other valuation, measurement, and loss adjustment calculations of the amount of loss, covered damage, and cost of repairs. However, attorney work product and attorney-client privileged documents, and documents that indicate fraud by the insured or that contain medically privileged information, are excluded from the documents an insurer is required to provide pursuant to this section to a claimant. Within 15 calendar days after receiving a request from an insured for claim-related documents, the insurer shall provide the insured with copies of all claim-related documents, except those excluded by this section. Nothing in this section shall be construed to affect existing litigation discovery rights.

Appraisal

In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written request of either,

each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of the request. Where the request is accepted, the appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon the umpire, then, on request of the insured or this company, the umpire shall be selected by a judge of a court of record in the state in which the property covered is located. Appraisal proceedings are informal unless the insured and this company mutually agree otherwise. For purposes of this section, ''informal'' means that no formal discovery shall be conducted, including depositions, interrogatories, requests for admission, or other forms of formal civil discovery, no formal rules of evidence shall be applied, and no court reporter shall be used for the proceedings. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by the parties equally. In the event of a government-declared disaster, as defined in the Government Code, appraisal may be requested by either the insured or this company but shall not be compelled.

Adjusters

If, within a six-month period, the company assigns a third or subsequent adjuster to be primarily responsible for a claim, the insurer, in a timely manner, shall provide the insured with a written status report. For purposes of this section, a written status report shall include a summary of any decisions or actions that are substantially related to the disposition of a claim, including, but not limited to, the amount of losses to structures or contents, the retention or consultation of design or construction professionals, the amount of coverage for losses to structures or contents and all items of dispute.

CHAPTER 584

An act to amend Section 1102.6 of the Civil Code, and to add Chapter 18 (commencing with Section 26100) to Division 20 of, the Health and Safety Code, relating to toxic mold.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 1102.6 of the Civil Code is amended to read:

1102.6. The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____ _____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF _____, 19___. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

☐ Inspection reports completed pursuant to the contract of sale or receipt for deposit.

☐ Additional inspection reports or disclosures:

_____

_____

_____

SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller __is __is not occupying the property.
A. The subject property has the items checked below (read across):

__Range	__Oven	__Microwave
__Dishwasher	__Trash Compactor	__Garbage Disposal
__Washer/Dryer Hookups		__Rain Gutters
__Burglar Alarms	__Smoke Detector(s)	__Fire Alarm
__TV Antenna	__Satellite Dish	__Intercom
__Central Heating	__Central Air Cndtng.	__Evaporator Cooler(s)
__Wall/Window Air Cndtng.	__Sprinklers	__Public Sewer System
__Septic Tank	__Sump Pump	__Water Softener
__Patio/Decking	__Built-in Barbecue	__Gazebo
__Sauna		
__Hot Tub__Locking Safety Cover *	__Pool __Child Resistant Barrier *	__Spa__Locking Safety Cover *
__Security Gate(s)	__Automatic Garage Door Opener(s) *	__Number Remote Controls
Garage:__Attached	__Not Attached	__Carport
Pool/Spa Heater: __Gas	__Solar	__Electric
Water Heater: __Gas	__Water Heater Anchored, braced, or Strapped *	__Private Utility or Other_____
Water Supply: __City	__Well	
Gas Supply: __Utility	__Bottled	
__Window Screens	__Window Security Bars__Quick Release Mechanism on Bedroom Windows *	

Exhaust Fan(s) in _____ 220 Volt Wiring in _____ Fireplace(s) in _____
Gas Starter _____ Roof(s): Type: _____ Age: _____ (approx.)
Other: _____
Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? __Yes __No. If yes, then describe.
(Attach additional sheets if necessary): _____
_____
_____
_____
_____

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? __Yes __No. If yes, check appropriate space(s) below.
__Interior Walls __Ceilings __Floors __Exterior Walls __Insulation __Roof(s) __Windows __Doors __Foundation __Slab(s) __Driveways __Sidewalks __Walls/Fences __Electrical Systems __Plumbing/Sewers/Septics __Other Structural Components (Describe: _____
_____)
If any of the above is checked, explain. (Attach additional sheets if necessary):___
_____
_____
_____
_____

* This garage door opener or child resistant pool barrier may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or with the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. The water heater may not be anchored, braced, or strapped in accordance with Section 19211 of the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property ..... __Yes __No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ..... __Yes __No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property ..... __Yes __No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits ..... __Yes __No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes ..... __Yes __No
6. Fill (compacted or otherwise) on the property or any portion thereof ..... __Yes __No
7. Any settling from any cause, or slippage, sliding, or other soil problems ..... __Yes __No
8. Flooding, drainage or grading problems ..... __Yes __No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides ..... __Yes __No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements ..... __Yes __No
11. Neighborhood noise problems or other nuisances ..... __Yes __No
12. CC&R's or other deed restrictions or obligations ..... __Yes __No
13. Homeowners' Association which has any authority over the subject property ..... __Yes __No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ..... __Yes __No
15. Any notices of abatement or citations against the property ..... __Yes __No
16. Any lawsuits by or against the Seller threatening to or affecting this real property, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ..... __Yes __No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): _____

_____

_____

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____
Seller _____ Date _____

III

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____
_____
_____
_____

Agent (Broker Representing Seller) _____ By _____ Date _____
(Please Print) (Associate Licensee or Broker-Signature)

IV

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____
_____
_____
_____

Agent (Broker obtaining the Offer) _____ By _____ Date _____
(Please Print) (Associate Licensee or Broker-Signature)

V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer_____ Date _____
Seller _____ Date _____ Buyer_____ Date _____

Agent (Broker
Representing Seller) _____ By _____ Date _____
(Associate Licensee
or Broker-Signature)

Agent (Broker
obtaining the Offer) _____ By _____ Date _____
(Associate Licensee
or Broker-Signature)

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

SEC. 2. Chapter 18 (commencing with Section 26100) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 18. TOXIC MOLD

Article 1. General Provisions

26100. This chapter shall be known, and may be cited, as the Toxic Mold Protection Act of 2001.

26101. For purposes of this chapter, the following definitions apply:

(a) ''Affect'' means to cause a condition by the presence of mold in the dwelling unit, building, appurtenant structure, common wall, heating system, or ventilating and air-conditioning system that affects the indoor air quality of a dwelling unit or building.

(b) ''Authoritative bodies'' means any recognized national or international entities with expertise on public health, mold identification and remediation, or environmental health, including, but not limited to, other states, the United States Environmental Protection Agency, the World Health Organization, the American Conference of Governmental Industrial Hygienists, the New York City Department of Health, the Centers for Disease Control and Prevention, and the American Industrial Hygiene Association.

(c) ''Certified Industrial Hygienist'' means a person who has met the education, experience, and examination requirements of an industrial hygiene certification organization as defined in Section 20700 of the Business and Professions Code.

(d) ''Code enforcement officer'' means a local official responsible for enforcing housing codes and maintaining public safety in buildings using an interdepartmental approach at the local government level.

(e) ''Department'' means the State Department of Health Services, designated as the lead agency in the adoption of permissible exposure limits to mold in indoor environments, mold identification and remediation efforts, and the development of guidelines for the determination of what constitutes mold infestation.

(f) ''Indoor environments'' means the affected dwelling unit or affected commercial or industrial building.

(g) ''Mold'' means any form of multicellular fungi that live on plant or animal matter and in indoor environments. Types of mold include, but are not limited to, Cladosporium, Penicillium, Alternaria, Aspergillus, Fuarim, Trichoderma, Memnoniella, Mucor, and Stachybotrys chartarum, often found in water-damaged building materials.

(h) ''Person'' means an individual, corporation, company, association, partnership, limited liability company, municipality, public utility, or other public body or institution.

(i) ''Public health officer'' means a local health officer appointed pursuant to Section 101000 or a local comprehensive health agency designated by the board of supervisors pursuant to Section 101275 to carry out the drinking water program.

26101.5. All standards that the department develops pursuant to this chapter shall be in accordance with existing administrative law procedures applicable to the development of regulations.

26101.7. The department shall convene a task force which shall advise the department on the development of standards pursuant to Sections 26103, 26105, 26106, 26120, and 26130. The task force shall be comprised of representatives of public health officers, environmental health officers, code enforcement officers, experts on the health effects of molds, medical experts, certified industrial hygienists, mold abatement experts, representatives of government-sponsored enterprises, representatives from school districts or county offices of education, representatives of employees and representatives of employers, and affected consumers, which include, but are not limited to, residential, commercial and industrial tenants, homeowners, environmental groups, and attorneys, and affected industries, which include, but are not limited to, residential, commercial and industrial building proprietors, managers or landlords, builders, realtors, suppliers of building materials and suppliers of furnishings, and insurers. Task force members shall serve on a voluntary basis and shall be responsible for any costs associated with their participation in the task force. The department shall not be responsible for travel costs incurred by task force members or otherwise compensating task force members for costs associated with their participation in the task force.

26102. The department shall consider the feasibility of adopting permissible exposure limits to mold in indoor environments.

26103. (a) If the department finds that adopting permissible exposure limits to mold in indoor environments is feasible, the department, in consultation with the task force convened pursuant to Section 26101.7, shall:

(1) Adopt permissible exposure limits to mold for indoor environments that avoid adverse effects on health, with an adequate margin of safety, and avoid any significant risk to public health.

(2) Notwithstanding paragraph (1), balance the protection of public health with technological and economic feasibility when it adopts permissible exposure limits.

(3) Utilize and include the latest scientific data or existing standards adopted by authoritative bodies.

(4) Develop permissible exposure limits that target the general population.

(b) The department shall consider all of the following criteria when it adopts permissible exposure limits for molds in indoor environments:

(1) The adverse health effects of exposure to molds on the general population, including specific effects on members of subgroups that comprise a meaningful portion of the general population, which may include infants, children age 6 years and under, pregnant women, the elderly, asthmatics, allergic individuals, immune compromised individuals, or other subgroups that are identifiable as being at greater risk of adverse health effects than the general population when exposed to molds.

(2) The standards for molds, if any, adopted by authoritative bodies.

(3) The technological and economic feasibility of compliance with the proposed permissible exposure limit for molds. For the purposes of determining economic feasibility pursuant to this paragraph, the department shall consider the costs of compliance to tenants, landlords, homeowners, and other affected parties.

(4) Toxicological studies and any scientific evidence as it relates to mold.

(c) The department may develop alternative permissible exposure limits applicable for facilities, which may include hospitals, child care facilities, and nursing homes, whose primary business is to serve members of subgroups that comprise a meaningful portion of the general population and are at greater risk of adverse health effects from molds than the general population. These subgroups may include infants, children age 6 years and under, pregnant women, the elderly, asthmatics, allergic individuals, or immune compromised individuals.

(d) The department shall report to the Legislature on its progress in developing the permissible exposure limit for molds by July 1, 2003.

26104. (a) (1) The department shall, at the time it commences preparation of the permissible exposure limits to mold, provide notice electronically by posting on its Internet Web site a notice that informs interested persons that the department has initiated work on the permissible exposure limits to mold.

(2) The notice shall also include a brief description or a bibliography of the technical documents or other information the department has identified to date as relevant to the preparation of the permissible exposure limits.

(3) The notice shall inform persons who wish to submit information concerning exposure to molds of the name and address of the person in the department to whom the information may be sent, the date by which the information must be received in order for the department to consider it in the preparation of the permissible exposure limits, and that all information submitted will be made available to any member of the public who makes the request.

(b) The department may amend the permissible exposure limits to molds to make the limits less stringent if the department shows clear and convincing evidence that the permissible exposure limits to molds should be made less stringent and the amendment is made consistent with Section 26103.

(c) The department may review, and consider adopting by reference, any information prepared by, or on behalf of the United States Environmental Protection Agency or other authoritative bodies, for the purpose of adopting national permissible exposure limits to molds.

(d) At least once every five years, after adoption of permissible exposure limits to molds, the department shall review the adopted limits and shall, consistent with the criteria set forth in subdivisions (a) and (b) of Section 26103, amend the permissible exposure limits if any of the following occur:

(1) Changes in technology or treatment techniques that permit a materially greater protection of public health.

(2) New scientific evidence that indicates that molds may present a materially different risk to public health than was previously determined.

26105. (a) The department, in consultation with the task force convened pursuant to Section 26101.7, shall adopt practical standards to assess the health threat posed by the presence of mold, both visible and invisible or hidden, in an indoor environment.

(b) The department shall adopt assessment standards for molds that do the following:

(1) Protect the public's health.

(2) Notwithstanding paragraph (1), balance the protection of public health with technological and economic feasibility when it adopts assessment standards.

(3) Utilize and include the latest scientific data or existing standards for the assessment of molds adopted by authoritative bodies.

(4) Develop standards that target the general population.

(5) The department shall ensure that air or surface testing is not required to determine whether the presence of mold constitutes a health threat posed by the presence of mold, both visible and invisible or hidden, in an indoor environment.

(c) The department shall consider all of the following criteria when it adopts standards for the assessment of molds in indoor environments:

(1) The adverse health effects of exposure to molds on the general population, including specific effects on members of subgroups that comprise a meaningful portion of the general population, which may include infants, children age 6 years and under, pregnant women, the elderly, asthmatics, allergic individuals, immune compromised individuals, or other subgroups that are identifiable as being at greater

risk of adverse health effects than the general population when exposed to molds.

(2) The standards for assessment of molds, if any, adopted by authoritative bodies.

(3) The technological and economic feasibility of compliance with the proposed permissible exposure limit for molds. For the purposes of determining economic feasibility pursuant to this paragraph, the department shall consider the costs of compliance to tenants, landlords, homeowners, and other affected parties.

(4) Any toxicological studies or additional scientific evidence.

(d) The department shall report to the Legislature on its progress in developing the assessment standards for molds by July 1, 2003.

26106. The department may develop alternative assessment standards applicable for facilities, which may include hospitals, child care facilities, and nursing homes, whose primary business is to serve members of subgroups that comprise a meaningful portion of the general population and are at greater risk of adverse health effects to molds than the general population. These subgroups may include infants, children age 6 years and under, pregnant women, the elderly, asthmatics, allergic individuals, or immune compromised individuals.

26107. (a) (1) The department shall, at the time it commences preparation of standards for the assessment of molds, provide notice electronically by posting on its Internet Web site a notice that informs interested persons that the department has initiated work on the assessment standards.

(2) The notice shall also include a brief description, or a bibliography, of the technical documents or other information the department has identified to date as relevant to the preparation of the assessment standards.

(3) The notice shall inform persons who wish to submit information concerning the assessment of molds in indoor environments of the name and address of the person in the department to whom the information may be sent, the date by which the information must be received in order for the department to consider it in the preparation of the assessment standards, and that all information submitted will be made available to any member of the public who makes the request.

(b) The department may review, and consider adopting by reference, any information prepared by, or on behalf of, the United States Environmental Protection Agency or other authoritative bodies, for the purpose of adopting national assessment standards for molds.

(c) At least once every five years, after adoption of assessment standards for molds, the department shall review the adopted standards and shall, consistent with the criteria set forth in subdivisions (a), (b),

and (c) of Section 26105, amend the standards if any of the following occur:

(1) Changes in technology or treatment techniques that permit a materially greater protection of public health.

(2) New scientific evidence that indicates that molds may present a materially different risk to public health than was previously determined.

Article 2. Guidelines for Identification of Molds

26120. The department, in consultation with the task force convened pursuant to Section 26101.7, shall adopt mold identification guidelines for the recognition of mold, water damage, or microbial volatile organic compounds in indoor environments.

26121. Identification guidelines shall include scientifically valid methods to identify the presence of mold including elements for collection of air, surface and bulk samples, visual identification, olfactory identification, laboratory analysis, measurements of amount of moisture, and presence of mold and other recognized analytical methods used for the identification of molds.

26122. (a) Identification guidelines developed by the department shall do all of the following:

(1) Avoid adverse effects on the health of the general population, with an adequate margin of safety, and avoid any significant risk to public health.

(2) Notwithstanding paragraph (1), balance the protection of public health with technological and economic feasibility.

(3) Utilize and include the latest scientific data or existing standards for the assessment of molds adopted by authoritative bodies.

(b) The department shall consider all of the following criteria when it develops identification guidelines for mold:

(1) Permissible exposure limits to molds developed by the State Department of Health Services pursuant to subdivisions (a) and (b) of Section 26103, or what constitutes a health threat posed by the presence of mold, both visible and invisible or hidden, in an indoor environment, according to the department's standards as developed pursuant to Section 26105.

(2) Standards for mold identification, if any, adopted by authoritative bodies.

(3) Professional judgment and practicality.

(4) Toxicological reports or additional scientific evidence.

(c) The department shall not require a commercial, industrial, or residential landlord or a public entity that rents or leases a unit or building to conduct air or surface tests of units or buildings to determine

whether the presence of molds exceeds the permissible exposure limits to mold established by subdivisions (a), (b), and (c) of Section 26103.

(d) The department shall develop a reporting form for building inspection that may be used to document the presence of mold.

(e) The department shall report to the Legislature on its progress in developing identification guidelines for mold by July 1, 2003.

26123. The department may review, and consider adopting by reference, any information prepared by, or on behalf of, the United States Environmental Protection Agency or other authoritative bodies, for the purpose of adopting national identification standards for molds.

26124. (a) The department shall, at the time it commences preparation of identification guidelines for mold, electronically post on its Internet Web site a notice that informs interested persons that it has initiated work on the identification guidelines.

(b) The notice shall include a brief description, or a bibliography, of the technical documents or other information the department has identified to date as relevant to the preparation of the identification guidelines for mold.

(c) The notice shall inform persons who wish to submit mold identification information of the name and address of the person in the office to whom the information may be sent, the date by which the information must be received for the department to consider it in the preparation of the identification guidelines, and that all information submitted will be made available to any member of the public who makes the request.

26125. All identification guidelines for mold published by the department shall be reviewed at least once every five years and revised, as necessary, based upon the availability of new scientific data or information on effective mold identification.

Article 3. Guidelines for Remediation

26130. The department, in consultation with the task force convened pursuant to Section 26101.7, shall develop and disseminate remediation guidelines for molds in indoor environments.

26131. (a) Remediation guidelines for mold developed by the department shall do all of the following:

(1) Provide practical guidance for the removal of mold and abatement of the underlying cause of mold and associated water intrusion and water damage in indoor environments.

(2) Protect the public's health.

(3) Notwithstanding paragraph (2), balance the protection of public health with technological and economic feasibility.

(4) Utilize and include toxicological reports, the latest scientific data, or existing standards for the remediation of molds adopted by authoritative bodies.

(5) Provide practical guidance for the removal or cleaning of contaminated materials in a manner that protects the health of the person performing the abatement.

(6) Include criteria for personal protective equipment.

(7) Not require a landlord, owner, seller, or transferor, to be specially trained or certified or utilize the services of a specially qualified professional to conduct the mold remediation.

(b) The department shall consider all of the following criteria when it develops remediation guidelines for mold:

(1) Permissible exposure limits to molds developed by the department pursuant to subdivisions (a) and (b) of Section 26103, or what constitutes a health threat posed by the presence of mold, both visible and invisible or hidden, in an indoor environment, according to the department's guidelines as developed pursuant to Section 26105.

(2) Guidelines for mold remediation, if any, adopted by authoritative bodies.

(3) Professional judgment and practicality.

(c) The department shall not require a commercial, industrial, or residential landlord, or a public entity that rents or leases a unit or building to conduct air or surface tests of units or buildings to determine whether the presence of molds exceeds the permissible exposure limits to mold established by subdivisions (a), (b), and (c) of Section 26103.

(d) The department shall report to the Legislature on its progress in developing remediation standards for mold by July 1, 2003.

26132. (a) The department shall, at the time it commences preparation of remediation guidelines for mold, electronically post on its Internet Web site, a notice that informs interested persons that it has initiated work on the remediation standards.

(b) The notice shall also include a brief description, or a bibliography, of the technical documents or other information the department has identified to date in the preparation of remediation guidelines for mold.

(c) The notice shall inform persons who wish to submit information concerning mold remediation of the name and the address of the person in the office to whom the information may be sent, the date by which the information must be received in order for the department to consider it in the preparation of remediation standards, and that all information submitted will be made available to any member of the public who makes the request.

26133. The department may review, and consider adopting by reference, any information prepared by, or on behalf of, the United States

Environmental Protection Agency or other authoritative bodies, for the purpose of adopting national remediation standards for molds.

26134. (a) The department shall make available to the public upon request, information about contracting for the removal of mold in a building or surrounding environment, including all of the following:

(1) Recommended steps to take when contracting with a company to remove mold.

(2) Existing laws, regulations, and guidelines developed by the department, pertaining to permissible exposure limits to mold infestation, identification, and remediation.

(3) Basic health information as contained in existing mold publications.

(b) All mold remediation guidelines published by the department shall be reviewed at least once every five years and revised, as necessary based upon the availability of new scientific data.

(c) (1) The State Department of Health Services shall develop public education materials and resources to inform the public about the health effects of molds, methods to prevent, identify and remediate mold growth, resources to obtain information about molds, and contact information for individuals, organizations, or government entities to assist with public concerns about molds.

(2) The department shall make its public education materials available to public health officers, environmental health officers, commercial and residential landlord organizations, homeowners' organizations, and tenants' organizations. These materials shall be readily available to the general public.

(3) These materials shall be comprehensible to the general public.

(4) These materials shall be produced to include other languages, in addition to English, to accommodate the diverse multicultural population of California.

(5) These materials shall be made available on the department's Internet Web site.

Article 4. Disclosures

26140. (a) Subject to subdivisions (b), (c), and (d), a seller or transferor of commercial or industrial real property, shall provide written disclosure to prospective buyers as soon as practicable before the transfer of title when the seller or transferor knows of the presence of mold, both visible and invisible or hidden, that affects the unit or building and the mold either exceeds permissible exposure limits to molds established by subdivisions (a), (b), and (c) of Section 26103 or poses a health threat, according to the department's guidelines as developed pursuant to Section 26105.

(b) A seller or transferor of commercial or industrial real property shall be exempt from providing written disclosure pursuant to this subdivision if the presence of mold was remediated according to the mold remediation guidelines developed by the department pursuant to Section 26130.

(c) A commercial or industrial real property landlord shall not be required to conduct air or surface tests of units or buildings to determine whether the presence of molds exceeds the permissible exposure limits to molds established by subdivisions (a) and (b) of Section 26103.

(d) The requirements of this section shall not apply until the first January 1 or July 1 that occurs at least six months after the department adopts standards pursuant to Sections 26103 and 26105 and develops guidelines pursuant to Section 26130.

26141. (a) Subject to subdivisions (c), (d), and (e), commercial and industrial landlords shall provide written disclosure to prospective and current tenants of the affected units as specified in subdivision (b), when the landlord knows that mold, both visible and invisible or hidden, is present that affects the unit or the building and the mold either exceeds the permissible exposure limits to molds established by subdivisions (a) and (b) of Section 26103 or poses a health threat according to the department's guidelines as developed pursuant to Section 26105.

(b) The written notice required by subdivision (a) shall be provided:

(1) To prospective tenants as soon as practicable and prior to entering into the rental agreement.

(2) To current tenants in affected units as soon as is reasonably practical.

(c) A commercial and industrial landlord shall be exempt from providing written disclosure to prospective tenants pursuant to this section if the presence of mold was remediated according to the mold remediation guidelines developed by the department pursuant to Section 26130.

(d) A commercial or industrial landlord shall not be required to conduct air or surface tests of units or buildings to determine whether the presence of molds exceeds the permissible exposure limits to molds established by subdivisions (a) and (b) of Section 26103.

(e) The requirements of this section shall not apply until the first January 1 or July 1 that occurs at least six months after the department adopts standards pursuant to Sections 26103 and 26105 and develops guidelines pursuant to Section 26130.

26142. Any tenant of a commercial or industrial real property who knows that mold is present in the building, heating system, ventilating or air-conditioning system, or appurtenant structures, or that there is a condition of chronic water intrusion or flood, shall inform the landlord of this knowledge in writing within a reasonable period of time. The

tenant shall make the property available to the landlord or his or her agents for appropriate assessment or remedial action as soon as is reasonably practicable if the landlord is responsible for maintenance of the property. Nothing in this section is intended to any way affect existing duties and obligations of residential tenants and landlords.

26143. Commercial and industrial landlords, who know or have notice that mold is present in the building, heating system, ventilating or air-conditioning system, or appurtenant structures, or that there is a condition of chronic water intrusion or flood, have an affirmative duty, within a reasonable period of time, to assess the presence of mold or condition likely to result in the presence of mold and conduct any necessary remedial action.

26144. The requirements of this article shall not apply to properties where the tenant is contractually responsible for maintenance of the property, including any remedial action.

26145. Any tenant of a commercial or industrial real property who knows or is informed that mold is present in the building, heating system, ventilating or air-conditioning system, or appurtenant structures, or that there is a condition of chronic water intrusion or flood, and is responsible for maintenance of the property shall inform the landlord in writing of that knowledge as soon as is reasonably practicable and shall correct the condition in compliance with the terms of the contract with the landlord.

26146. (a) A public entity that owns, leases, or operates a building shall provide written disclosure to all building occupants and prospective tenants as specified in subdivision (b) when the public entity knows, or has reasonable cause to believe, that a condition of chronic water intrusion or flood exists, or that mold, both visible and invisible or hidden, is present that affects the building or unit and the mold either exceeds the permissible exposure limits to molds established by subdivisions (a) and (b) of Section 26103, or poses a health threat according to the department's guidelines developed pursuant to Section 26105.

(b) The written notice required by subdivision (a) shall be provided:

(1) To prospective tenants as soon as practicable and prior to entering into the rental agreement.

(2) To current building occupants in affected units or buildings as soon as is reasonably practical.

(c) A public entity shall be exempt from providing written disclosure to prospective tenants pursuant to subdivision (a) if the presence of mold was remediated according to the mold remediation guidelines developed by the department pursuant to Section 26130.

(d) The requirements of this section shall not apply until the first January 1 or July 1 that occurs at least six months after the department

adopts standards pursuant to Sections 26103 and 26105 and develops guidelines pursuant to Section 26130.

26147. (a) Subject to subdivisions (b), (d), and (e), residential landlords shall provide written disclosure to prospective and current tenants of the affected units as specified in subdivision (b) when the residential landlord knows, or has reasonable cause to believe, that mold, both visible and invisible or hidden, is present that affects the unit or the building and the mold either exceeds the permissible exposure limits to molds established by subdivisions (a), (b), and (c) of Section 26103 or poses a health threat according to the department's guidelines as developed pursuant to Section 26105.

(b) Notwithstanding subdivision (a), a residential landlord shall not be required to conduct air or surface tests of units or buildings to determine whether the presence of molds exceeds the permissible exposure limits to molds established by subdivisions (a) and (b) of Section 26103.

(c) The written disclosure required by subdivision (a) shall be provided:

(1) To prospective tenants prior to entering into the rental or lease agreement.

(2) To current tenants in affected units as soon as is reasonably practical.

(d) A residential landlord shall be exempt from providing written disclosure to prospective tenants pursuant to this section if the presence of mold was remediated according to the mold remediation guidelines developed by the department pursuant to Section 26130.

(e) The requirements of this section shall not apply until the first January 1 or July 1 that occurs at least six months after the department adopts standards pursuant to Sections 26103 and 26105 and develops guidelines pursuant to Section 26130.

26148. (a) Residential landlords shall provide written disclosure to prospective tenants of the potential health risks and the health impact that may result from exposure to mold by distributing a consumer oriented booklet developed and disseminated by the department.

(b) The requirements of this section shall be provided to prospective residential tenants prior to entering the rental or lease agreement.

(c) The requirements of this section shall not apply until the first January 1 or July 1, that occurs at least six months after the department approves the consumer oriented booklet, as described in subdivision (a).

26149. (a) Nothing in this article shall relieve a seller, transferor, lessor, agent, landlord, or tenant from any responsibility for compliance with other obligations, laws, ordinances, codes, or regulations, including but not limited to the duties outlined in Sections 1941 and

1941.1 of the Civil Code and any other duties provided for under common law.

(b) Nothing in this article shall alter or modify any right, remedy, or defense otherwise available under law.

26150. (a) Nothing in this article shall affect the existing obligations of the parties or transferor to a real estate contract, or their agents, to disclose any facts materially affecting the value and desirability of the property, including, but not limited to, the physical conditions of the property and previously received reports of physical inspections noted on the disclosure form set forth in Section 1102.6 or 1102.6a of the Civil Code.

(b) Nothing in this article shall be construed to change the existing inspection and disclosure duties of a real estate broker or salesperson including, but not limited to, those duties imposed by Section 2079 of the Civil Code.

26151. The specification of items for disclosure in this article does not limit or abridge any obligation for disclosure created by any other provision of law, or which may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

26152. All items subject to disclosure requirements pursuant to this article shall be subject to enforcement pursuant to Article 5 (commencing with Section 26154).

26153. Neither the transferor nor any listing or selling agent shall be held liable for any error, inaccuracy, or omission of any information delivered pursuant to this article if the error, inaccuracy, or omission was not within the personal knowledge of the transferor, or the listing or selling agent, or was based on information timely provided by public agencies, or by other persons providing relevant information by delivery of a report or opinion prepared by an expert dealing with matters within the relevant scope of the professional's license or expertise, and ordinary care was exercised in obtaining and transmitting it.

Article 5. Enforcement

26154. Public health officers, code enforcement officers, environmental health officers, city attorneys, and any other appropriate government entities may respond to complaints about mold and may enforce standards adopted by the department, pursuant to subdivisions (a), (b), and (c) of Section 26103 and subdivisions (a), (b), and (c) of Section 26105, and enforce the disclosure requirements of Sections 26147 and 26148 that are developed by the department in consultation with the task force. The disclosure enforcement guidelines established by the department pursuant to this section shall include development of a form for disclosure and the penalties, if any, that may be imposed for

failure to disclose. No penalty shall be assessed against an owner for failure to disclose under Section 26147 where the owner provides disclosure to the tenants in a form that substantially conforms to the disclosure form developed by the department. Local authority to enforce disclosure requirements pursuant to this section shall not apply until the first January 1 or July 1 that occurs at least six months after the department adopts disclosure enforcement guidelines for compliance with Sections 26147 and 26148.

26155. After the State Department of Health Services, pursuant to administrative law procedures, submits the proposed regulations developed pursuant to this chapter, the Department of Consumer Affairs, in consultation with representatives from the State Department of Health Services, the Department of Industrial Relations, and members of the task force convened by the department pursuant to Section 26101.7, shall consider and report on the need for standards for mold testing professionals and mold remediation specialists.

Article 6. Implementation

26156. This chapter shall be implemented only to the extent that the department determines that funds are available for the implementation of this chapter.

CHAPTER 585

An act to amend Section 44300 of the Education Code, relating to teacher credentialing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 44300 of the Education Code is amended to read:

44300. (a) Commencing January 1, 1990, the commission may issue or renew emergency teaching or specialist permits in accordance with regulations adopted by the commission corresponding to the credential types specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 44225, provided that all of the following conditions are met:

(1) The applicant possesses a baccalaureate degree conferred by a regionally accredited institution of higher education and has fulfilled the subject matter requirements of Section 44301.

(2) The applicant passes the state basic skills proficiency test as provided for in Section 44252.

(3) The commission approves the justification for the emergency permit submitted by the school district in which the applicant is to be employed. The justification shall include all of the following:

(A) Annual documentation that the district has implemented in policy and practices a process for conducting a diligent search that shall include, but is not limited to, distributing job announcements, contacting college and university placement centers, advertising in local newspapers, exploring the incentives included in the Teaching As A Priority Block Grant established pursuant to Section 44735, participating in the state and regional recruitment centers established pursuant to Sections 44751 and 90530, and participating in job fairs in this state, but has been unable to recruit a sufficient number of certificated teachers, including teacher candidates pursuing full certification through internship, district internship, or other alternative routes established by the commission.

(B) A declaration of need for fully qualified educators based on the documentation set forth in subparagraph (A) and made in the form of a motion adopted by the governing board of the district or the county board of education at a regularly scheduled meeting of the governing board or the county board of education. The motion may not be part of the consent agenda and shall be entered in the minutes of the meeting.

(b) The commission may deny a request for an emergency permit that does not meet the justification set forth in subparagraph (A) of paragraph (3) of subdivision (a).

(c) It is the intent of the Legislature that all of the following occur:

(1) The commission shall issue preintern certificates in place of emergency teaching permits as sufficient resources are made available to school districts to provide services pursuant to Article 5.6 (commencing with Section 44305) to preinterns pursuing multiple subject or single subject teaching credentials.

(2) If the examination of the Pre-Internship Teaching Program required by this chapter demonstrates that the program should continue because it has been successful in better preparing and retaining preintern teachers than the emergency permit system, sufficient resources to fully fund the Pre-Internship Teaching Program shall be appropriated by July 2002. For purposes of this paragraph, two thousand dollars ($2,000) in state funding per preintern shall be deemed to be sufficient resources.

(3) The commission shall continue to issue emergency teaching permits to individuals employed by school districts defined in

regulations as remote from regionally accredited institutions of higher education.

(d) Commencing January 1, 1990, the commission may issue and reissue emergency permits corresponding to the credential types specified in paragraph (4) of subdivision (b) of Section 44225. The commission shall establish appropriate standards for each type of emergency permit specified in paragraph (4) of subdivision (b) of Section 44225.

(e) The exclusive representative of certificated employees, if any, as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, may submit a written statement to the commission agreeing or disagreeing with the justification submitted to the commission pursuant to paragraph (3) of subdivision (a).

(f) Commencing January 1, 1990, a person holding an emergency teaching or specialist permit shall attend an orientation to the curriculum and to techniques of instruction and classroom management, and shall teach only with the assistance and guidance of a certificated employee of the district who has completed at least three years of full-time teaching experience, or the equivalent thereof. It is the intent of the Legislature to encourage districts to provide directed teaching experience to new emergency permitholders with no prior teaching experience.

(g) The holder of an emergency permit shall participate in ongoing training, coursework, or seminars designed to prepare the individual to become a fully credentialed teacher or other educator in the subject area or areas in which he or she is assigned to teach or serve. The employing agency shall verify that employees applying to renew their emergency permits are meeting these ongoing training requirements.

(h) Emergency permits for pupil personnel services shall not be valid for the purpose of determining pupil eligibility for placement in any special education class or program.

(i) This section shall not apply to the issuance of an emergency substitute teaching permit, or of an emergency permit to a teacher who has consented to teach temporarily outside of his or her field of certification, for which the commission shall establish minimum requirements.

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 address the shortage of teachers in a timely manner, it is necessary that this act take effect immediately.

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CHAPTER 586

An act to amend Sections 47612.5, 47634, 47635, and 47663 of the Education Code, relating to charter schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

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

SECTION 1. Section 47612.5 of the Education Code is amended to read:

47612.5. (a) Notwithstanding any other provision of law and as a condition of apportionment, a charter school shall do all of the following:

(1) Offer, at a minimum, the same number of minutes of instruction set forth in paragraph (3) of subdivision (a) of Section 46201 for the appropriate grade levels.

(2) Maintain written contemporaneous records that document all pupil attendance and make these records available for audit and inspection.

(3) Certify that its pupils have participated in the state testing programs specified in Chapter 5 (commencing with Section 60600) of Part 33 in the same manner as other pupils attending public schools as a condition of apportionment of state funding.

(b) Notwithstanding any other provision of law, a charter school that provides independent study shall comply with Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 and implementing regulations adopted thereunder. The State Board of Education shall adopt regulations that apply that article to charter schools. To the extent that these regulations concern the qualifications of instructional personnel, the State Board of Education shall be guided by subdivision (*l*) of Section 47605.

(c) A reduction in apportionment made pursuant to subdivision (a) shall be proportional to the magnitude of the exception that causes the reduction. For purposes of paragraph (1) of subdivision (a), for each charter school that fails to offer pupils the minimum number of minutes of instruction specified in that paragraph, the Superintendent of Public Instruction shall withhold from the charter school's apportionment for average daily attendance of the affected pupils, by grade level, the sum of that apportionment multiplied by the percentage of the minimum number of minutes of instruction at each grade level that the charter school failed to offer.

SEC. 2. Section 47634 of the Education Code is amended to read:

47634. The Superintendent of Public Instruction shall annually compute a categorical block grant amount for each charter school as follows:

(a) The superintendent shall compute, as of June 30, 1999, the estimated statewide average amount of funding for other state categorical aid per unit of average daily attendance received by school districts in 1998–99, for each of four grade level ranges: kindergarten and grades 1, 2, and 3; grades 4, 5, and 6; grades 7 and 8; and grades 9 to 12, inclusive. For purposes of this computation, other state categorical aid is limited to the following programs:

(1) The Agricultural Vocational Education Incentive Program, as set forth in Article 7.5 (commencing with Section 52460) of Chapter 9 of Part 28.

(2) Apprentice education established pursuant to Article 8 (commencing with Section 8150) of Chapter 1 of Part 6.

(3) The Beginning Teacher Support and Assessment System as set forth in Article 4.5 (commencing with Section 44279.1) of Chapter 2 of Part 25.

(4) College preparation programs as set forth in Chapter 8 (commencing with Section 60830) of Part 33, the Academic Improvement and Achievement Act as set forth in Chapter 12 (commencing with Section 11020) of Part 7, and the advanced placement program as set forth in Chapter 8.3 (commencing with Section 52240) of Part 28.

(5) Community day schools as set forth in Article 3 (commencing with Section 48660) of Chapter 4 of Part 27.

(6) The Demonstration Programs in Intensive Instruction as set forth in Chapter 4 (commencing with Section 58600) of Part 31.

(7) The School-Based Pupil Motivation and Maintenance Program and Dropout Recovery Act, as set forth in Article 7 (commencing with Section 54720) of Chapter 9 of Part 29.

(8) The Early Intervention for School Success Program, as set forth in Article 4.5 (commencing with Section 54685) of Chapter 9 of Part 29.

(9) Education Technology pursuant to Article 15 (commencing with Section 51870.5) of Chapter 5 of Part 28.

(10) Foster youth programs pursuant to Chapter 11.3 (commencing with Section 42920) of Part 24.

(11) Gifted and talented pupil programs pursuant to Chapter 8 (commencing with Section 52200) of Part 28.

(12) The Healthy Start Support Services for Children Act, as set forth in Chapter 5 (commencing with Section 8800) of Part 6.

(13) High-risk first-time offenders programs pursuant to Chapter 2 (commencing with Section 47760) of Part 26.95.

(14) The General Fund contribution to the State Instructional Material Fund pursuant to Article 3 (commencing with Section 60240) of Chapter 2 of Part 33.

(15) Intersegmental programs for kindergarten and grades 1 to 12, inclusive, funded by Item 6110-230-0001 of Section 2.00 of the Budget Act of 1998.

(16) Proposition 98 educational programs pursuant to Item 6110-231-0001 of Section 2.00 of the Budget Act of 1998.

(17) The California Mentor Teacher Program, as set forth in Article 4 (commencing with Section 44490) of Chapter 3 of Part 25.

(18) The Miller-Unruh Basic Reading Act of 1965, as set forth in Chapter 2 (commencing with Section 54100) of Part 29.

(19) The Morgan-Hart Class Size Reduction Act of 1989, as set forth in Chapter 6.8 (commencing with Section 52080) of Part 28.

(20) Opportunity schools pursuant to Article 2 (commencing with Section 48630) of Chapter 4 of Part 27.

(21) Partnership academies pursuant to Article 5 (commencing with Section 54690) of Chapter 9 of Part 29.

(22) Mathematics staff development pursuant to Chapter 3.25 (commencing with Section 44695) and Chapter 3.33 (commencing with Section 44720) of Part 25.

(23) Improvement of elementary and secondary education pursuant to Chapter 6 (commencing with Section 52000) of Part 28.

(24) The School Community Policing Partnership Act of 1998, as set forth in Article 6 (commencing with Section 32296) of Chapter 2.5 of Part 19.

(25) The School/Law Enforcement partnership funded by Item 6110-226-0001 of Section 2.00 of the Budget Act of 1998.

(26) Specialized secondary schools pursuant to Chapter 6 (commencing with Section 58800) of Part 31.

(27) School personnel staff development and resource centers pursuant to Chapter 3.1 (commencing with Section 44670) of Part 25.

(28) Supplemental grant funding, not otherwise included in the programs described above, provided by Item 6110-230-0001 of Section 2.00 of the Budget Act of 1998.

(29) Academic progress and counseling review pursuant to Section 48431.6.

(30) The Schiff-Bustamante Standards-Based Instructional Materials Program as set forth in Chapter 3.5 (commencing with Section 60450) of Part 33.

(31) The Elementary School Intensive Reading Program, as set forth in Chapter 16 (commencing with Section 53025) of Part 28.

(32) The California Public School Library Protection Act, as set forth in Article 6 (commencing with Section 18175) of Chapter 2 of Part 11.

(33) The California Peer Assistance and Review Program for Teachers, as set forth in Article 4.5 (commencing with Section 44500) of Chapter 3 of Part 25.

Notwithstanding any other provision of law, charter schools that have received a block grant pursuant to this section shall not be eligible to receive separate funding for programs enumerated in paragraphs (1) to (33), inclusive, or any other state categorical aid programs established on or after July 1, 1999, that are included in the calculation made pursuant to this subdivision and for which charter schools are not required to apply separately.

(b) For purposes of the computation prescribed by subdivision (a), other state categorical aid may not include any of the following:

(1) Programs for which a charter school is required to apply separately.

(2) Programs that support, or are provided in lieu of, capital expenses.

(3) Funding for court-ordered or voluntary desegregation programs.

(4) Special education programs.

(5) Economic Impact Aid.

(6) Lottery funds.

(c) The superintendent shall annually adjust each of the resulting four amounts computed pursuant to subdivision (a) by the cumulative percentage change from the 1998–99 fiscal year, as annually calculated by the Director of Finance pursuant to Section 47634.5, in the total amount of state funding per unit of average daily attendance received by K–12 local educational agencies for purposes that apply toward meeting the requirements of Section 8 of Article XVI of the California Constitution, exclusive of funding for adult education, child development programs, special education, Economic Impact Aid, revenue limits for school districts and county offices of education, and programs for which a charter school is required to apply separately.

(d) The superintendent shall multiply each of the four amounts computed in subdivision (c) by the charter school's average daily attendance in the corresponding grade level ranges.

(e) The superintendent shall compute the statewide average amount of funding per identified educationally disadvantaged pupil received by school districts in the current year pursuant to Article 2 (commencing with Section 54020) of Chapter 1 of Part 29. This amount shall be multiplied by the number of educationally disadvantaged pupils enrolled in the charter school. The resulting amount may, if greater than zero, not be less than the minimum amount of Economic Impact Aid funding to which a school district of similar size would be entitled pursuant to Section 54031. For purposes of this subdivision, a pupil who is eligible for subsidized meals pursuant to Section 49552 and is

identified as an English language learner pursuant to subdivision (a) of Section 306 shall count as two pupils.

(f) The superintendent shall add the amounts computed in subdivisions (d) and (e). The resulting amount shall be the charter school's categorical block grant that the superintendent shall apportion to each charter school from funds appropriated for this purpose in the annual Budget Act or another statute.

(g) Notwithstanding any other provision of law, a charter school is not eligible to apply for funding under any of the programs the funding of which is included in the computation of the categorical block grant. The Superintendent of Public Instruction shall annually provide each charter school with a list of these programs and shall ensure that a charter school receives timely notification of the opportunity to apply for programs administered by the State Department of Education that are excluded from the categorical block grant.

(h) It is the intent of the Legislature to fully fund the categorical block grant and to appropriate additional funding that may be needed in order to compensate for unanticipated increases in average daily attendance in charter schools.

(i) Categorical block grant funding may be used for any purpose determined by the governing body of the charter school.

SEC. 3. Section 47635 of the Education Code is amended to read:

47635. (a) A sponsoring local educational agency shall annually transfer to each of its charter schools funding in lieu of property taxes equal to the lesser of the following two amounts:

(1) The average amount of property taxes per unit of average daily attendance, including average daily attendance attributable to charter schools, received by the local educational agency, multiplied by the charter school's average daily attendance.

(2) The statewide average general-purpose funding per unit of average daily attendance received by school districts, as determined by the State Department of Education, multiplied by the charter school's average daily attendance in each of the four corresponding grade level ranges: kindergarten and grades 1, 2, and 3; grades 4, 5, and 6; grades 7 and 8; and grades 9 to 12, inclusive.

(b) The sponsoring local educational agency shall transfer funding in lieu of property taxes to the charter school in monthly installments, by no later than the 15th of each month.

(1) For the months of August to February, inclusive, a charter school's funding in lieu of property taxes shall be computed based on the amount of property taxes received by the sponsoring local educational agency during the preceding fiscal year, as reported to the Superintendent of Public Instruction for purposes of the second principal apportionment. A sponsoring local educational agency shall transfer to

the charter school the charter school's estimated annual entitlement to funding in lieu of property taxes as follows:

(A) Six percent in August.

(B) Twelve percent in September.

(C) Eight percent each month in October, November, December, January, and February.

(2) For the months of March to June, inclusive, a charter school's funding in lieu of property taxes shall be computed based on the amount of property taxes estimated to be received by the sponsoring local educational agency during the fiscal year, as reported to the Superintendent of Public Instruction for purposes of the first principal apportionment. A sponsoring local educational agency shall transfer to each of its charter schools an amount equal to one-sixth of the difference between the school's estimated annual entitlement to funding in lieu of property taxes and the amounts provided pursuant to paragraph (1). An additional one-sixth of this difference shall be included in the amount transferred in the month of March.

(3) For the month of July, a charter school's funding in lieu of property taxes shall be computed based on the amount of property taxes estimated to be received by the sponsoring local educational agency during the prior fiscal year, as reported to the Superintendent of Public Instruction for purposes of the second principal apportionment. A sponsoring local educational agency shall transfer to each of its charter schools an amount equal to the remaining difference between the school's estimated annual entitlement to funding in lieu of property taxes and the amounts provided pursuant to paragraphs (1) and (2).

(4) Final adjustments to the amount of funding in lieu of property taxes allocated to a charter school shall be made in February, in conjunction with the final reconciliation of annual apportionments to schools.

(5) Subdivision (a) and paragraphs (1) to (4), inclusive, of subdivision (b) do not apply for pupils who reside in, and are otherwise eligible to attend a school in, a basic aid school district, but who attend a charter school in a nonbasic aid school district. With regard to these pupils, the sponsoring basic aid district shall transfer to the charter school an amount of funds equivalent to the revenue limit earned through average daily attendance by the charter school for each pupil's attendance, not to exceed the average property tax share per unit of average daily attendance for pupils residing and attending in the basic aid district. The transfer of funds shall be made in not fewer than two installments at the request of the charter school, the first occurring not later than February 1 and the second not later than June 1 of each school year. Payments shall reflect the average daily attendance certified for the time periods of the first and second principal apportionments,

respectively. The Superintendent of Public Instruction may not apportion any funds for the attendance of pupils described in this subdivision unless the amount transferred by the basic aid district is less than the revenue limit earned by the charter school, in which event the Superintendent of Public Instruction shall apportion the difference to the charter school from state funds.

SEC. 4. Section 47663 of the Education Code is amended to read:

47663. (a) For a pupil of a charter school sponsored by a basic aid school district who resides in, and is otherwise eligible to attend, a school district other than a basic aid school district, the Superintendent of Public Instruction shall apportion to the sponsoring school district an amount equal to 70 percent of the revenue limit per unit of average daily attendance that would have been apportioned to the school district that the pupil resides in and would otherwise have been eligible to attend.

(b) A district that loses basic aid status as a result of transferring property taxes to a charter school or schools pursuant to Section 47635 shall be eligible to receive a pro rata share of funding provided by subdivision (a), with the proration factor calculated as the ratio of the following:

(1) The amount of property taxes that the district receives in excess of its total revenue limit guarantee, prior to any transfers made pursuant to Section 47635.

(2) The total amount of property taxes transferred pursuant to Section 47635 to the charter school or schools that it sponsors.

(c) The Superintendent of Public Instruction may not apportion funds for the attendance of a pupil in a charter school of a nonbasic aid school district who resides in, and is otherwise eligible to attend school in, a basic aid school district unless the pupil is subject to the exception set forth in paragraph (5) of subdivision (b) of Section 47635.

(d) For purposes of this section, ''basic aid school district'' means a school district that does not receive from the state, for any fiscal year in which the subdivision is applied, an apportionment of state funds pursuant to subdivision (h) of Section 42238.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the Budget Act of 2001 with respect to the public schools, it is necessary that this act take effect immediately.

CHAPTER 587

An act to amend Section 7073 of the Government Code, relating to economic development.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. The Legislature hereby finds and declares that the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) has been successful in revitalizing disadvantaged communities in the state.

SEC. 2. Section 7073 of the Government Code is amended to read:

7073. (a) Except as provided in subdivision (e), any city, county, or city and county with an eligible area within its jurisdiction may complete a preliminary application for designation as an enterprise zone. The applying entity shall establish definitive boundaries for the proposed enterprise zone and the targeted employment area.

(b) (1) In designating enterprise zones, the agency shall select from the applications submitted those proposed enterprise zones that, upon a comparison of all of the applications submitted, indicate that they propose the most effective, innovative, and comprehensive regulatory, tax, program, and other incentives in attracting private sector investment in the zone proposed.

(2) For purposes of this subdivision, regulatory incentives include, but are not limited to, all of the following:

(A) The suspension or relaxation of locally originated or modified building codes, zoning laws, general development plans, or rent controls.

(B) The elimination or reduction of fees for applications, permits, and local government services.

(C) The establishment of a streamlined permit process.

(3) For purposes of this subdivision, tax incentives include, but are not limited to, the elimination or reduction of construction taxes or business license taxes.

(4) For the purposes of this subdivision, program and other incentives may include, but are not limited to, all of the following:

(A) The provision or expansion of infrastructure.

(B) The targeting of federal block grant moneys, including small cities, education, and health and welfare block grants.

(C) The targeting of economic development grants and loan moneys, including grant and loan moneys provided by the federal Urban

Development Action Grant program and the federal Economic Development Administration.

(D) The targeting of state and federal job disadvantaged and vocational education grant moneys, including moneys provided by the federal Job Training Partnership Act of 1982 (Public Law 97-300).

(E) The targeting of federal or state transportation grant moneys.

(F) The targeting of federal or state low-income housing and rental assistance moneys.

(G) The use of tax allocation bonds, special assessment bonds, bonds under the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5), industrial development bonds, revenue bonds, private activity bonds, housing bonds, bonds issued pursuant to the Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5), certificates of participation, hospital bonds, redevelopment bonds, school bonds, and all special provisions provided for under federal tax law for enterprise community or empowerment zone bonds.

(5) In the process of designating new enterprise zones, the agency shall take into consideration the location of existing zones and make every effort to locate new zones in a manner that will not adversely affect any existing zones.

(6) In designating new enterprise zones, the agency shall include in its criteria the fact that jurisdictions have been declared disaster areas by the President of the United States within the last seven years.

(7) When reviewing and ranking new enterprise zone applications, the agency shall give special consideration or bonus points, or both, to applications from jurisdictions that meet at least two of the following criteria:

(A) The percentage of households within the census tracts of the proposed enterprise zone area, the income of which is below the poverty level, is at least 17.5 percent.

(B) The average unemployment rate for the census tracts of the proposed enterprise zone area was not less than five percentage points above the statewide average for the most recent calendar year as determined by the Employment Development Department.

(C) The applicant jurisdiction has, and can document that it has, a unique distress factor affecting long-term economic development, including, but not limited to, resource depletion, plant closure, industry recession, natural disaster, or military base closure.

(c) In evaluating applications for designation, the agency shall ensure that applications are not disqualified solely because of technical deficiencies, and shall provide applicants with an opportunity to correct the deficiencies. Applications shall be disqualified if the deficiencies are not corrected within two weeks.

(d) (1) Except as provided in paragraph (2), or upon dedesignation pursuant to subdivision (c) of Section 7076.1 or Section 7076.2, a designation made by the agency shall be binding for a period of 15 years from the date of the original designation.

(2) The designation period for any zone designated pursuant to either Section 7073 or 7085 prior to 1990 may total 20 years, subject to possible dedesignation pursuant to subdivision (c) of Section 7076.1 or Section 7076.2, if the following requirements are met:

(A) The zone receives a superior or passing audit pursuant to subdivision (c) of Section 7076.1.

(B) The local jurisdictions comprising the zone submit an updated economic development plan to the agency justifying the need for an additional five years by defining goals and objectives that still need to be achieved and indicating what actions are to be taken to achieve these goals and objectives.

(e) (1) Notwithstanding any other provision of law, any area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or as a targeted economic development area, neighborhood economic development area, or program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, or any program area or part of a program area deemed designated as an enterprise zone pursuant to Section 7085.5 as it read prior to January 1, 1997, shall be deemed to be designated as an enterprise zone pursuant to this chapter. The effective date of designation of the enterprise zone shall be that of the original designation of the enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or of the program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, and in no event may the total designation period exceed 15 years, except as provided in paragraph (2) of subdivision (d).

(2) Notwithstanding any other provision of law, any enterprise zone authorized, but not designated, pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, shall be allowed to complete the application process started pursuant to that chapter, and to receive final designation as an enterprise zone pursuant to this chapter.

(3) Notwithstanding any other provision of law, any expansion of a designated enterprise zone or program area authorized pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, shall be deemed to be authorized as an expansion for a designated enterprise zone pursuant to this chapter.

(4) No part of this chapter may be construed to require a new application for designation by an enterprise zone designated pursuant to

Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or a targeted economic development area, neighborhood economic development area, or program area designated pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997.

(f) Notwithstanding any other provision of law, a city, county, or a city and county may designate a joint powers authority to administer the enterprise zone.

(g) No more than 42 enterprise zones may be designated at any one time pursuant to this chapter, including those deemed designated pursuant to subdivision (e). Upon the expiration or termination of a designation, the agency is authorized to designate another enterprise zone to maintain a total of 42 enterprise zones.

CHAPTER 588

An act to add Article 3.5 (commencing with Section 1360) to Chapter 4 of Division 2 of and to add and repeal Section 1363.5 of, the Fish and Game Code, relating to oak woodlands conservation.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

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

(a) The conservation of oak woodlands enhances the natural scenic beauty for residents and visitors, increases real property values, promotes ecological balance, provides habitat for over 300 wildlife species, moderates temperature extremes, reduces soil erosion, sustains water quality, and aids with nutrient cycling, all of which affect and improve the health, safety, and general welfare of the residents of the state.

(b) Widespread changes in land use patterns across the landscape are fragmenting the oak woodlands wildland character over extensive areas.

(c) The future viability of California's oak woodlands resources are dependent, to a large extent, on the maintenance of large scale land holdings or on smaller multiple holdings that are not divided into fragmented, nonfunctioning biological units.

(d) The growing population and expanding economy of the state have had a profound impact on the ability of the public and private sectors to conserve the biological values of oak woodlands. Many of the privately

owned oak woodlands stands are in areas of rapid urban and suburban expansion.

(e) A program to encourage and make possible the long-term conservation of oak woodlands is a necessary part of the state's wildlands protection policies and programs, and it is appropriate to expend money for that purpose. An incentive program of this nature will only be effective when used in concert with local planning and zoning strategies to conserve oak woodlands.

(f) Funding is necessary to sufficiently address the needs of conserving oak woodlands resources for future generations of Californians.

(g) California voters recognized the importance of funding that is needed to sufficiently protect the state's oak woodlands by passing Proposition 12, the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (the Villaraigosa-Keeley Act), which included not less than five million dollars ($5,000,000) for oak woodlands conservation.

SEC. 2. Article 3.5 (commencing with Section 1360) is added to Chapter 4 of Division 2 of the Fish and Game Code, to read:

Article 3.5. Oak Woodlands Conservation Act

1360. This article shall be known, and may be cited, as the Oak Woodlands Conservation Act.

1361. For purposes of this article, the following terms have the following meanings:

(a) ''Board'' means the Wildlife Conservation Board established pursuant to Section 1320.

(b) ''Conservation easement'' means a conservation easement, as defined in Section 815.1 of the Civil Code.

(c) ''Fund'' means the Oak Woodlands Conservation Fund.

(d) ''Land improvement'' means restoration or enhancement of biologically functional oak woodlands habitat.

(e) ''Local government entity'' means any city, county, city and county, district, or other local government entity, if the entity is otherwise authorized to acquire and hold title to real property.

(f) ''Nonprofit organization'' means a tax-exempt nonprofit organization that meets the requirements of subdivision (a) of Section 815.3 of the Civil Code.

(g) ''Oak'' means any species in the genus Quercus.

(h) ''Oak woodlands'' means an oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover.

(i) ''Oak woodlands management plan'' means a plan that provides protection for oak woodlands over time and compensates private landowners for conserving oak woodlands.

(j) ''Special oak woodlands habitat elements'' means multi- and single-layered canopy, riparian zones, cavity trees, snags, and downed woody debris.

1362. It is the intent of the Legislature that this article accomplish all of the following:

(a) Support and encourage voluntary, long-term private stewardship and conservation of California's oak woodlands by offering landowners financial incentives to protect and promote biologically functional oak woodlands over time.

(b) Provide incentives to protect and encourage farming and ranching operations that are operated in a manner that protects and promotes healthy oak woodlands.

(c) Provide incentives for the protection of oak trees providing superior wildlife values on private lands.

(d) Encourage local land use planning that is consistent with the preservation of oak woodlands, particularly special oak woodlands habitat elements.

(e) Provide guidelines for spending the funds allocated for oak woodlands pursuant to the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (the Villaraigosa-Keeley Act (Chapter 1.692 (commencing with Section 5096.300) of Division 5 of the Public Resources Code)).

(f) Establish a fund for oak woodlands conservation, to which future appropriations for oak woodlands protection may be made, and specify grant making guidelines.

1363. (a) The Oak Woodlands Conservation Fund is hereby created in the State Treasury. The fund shall be administered by the board. Moneys in the fund may be expended, upon appropriation by the Legislature, for the purposes of this article.

(b) Money may be deposited into the fund from gifts, donations, funds appropriated by the Legislature for the purposes of this article, or from federal grants or loans or other sources, and shall be used for the purpose of implementing this article, including administrative costs. Funds from the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (the Villaraigosa-Keeley Act (Chapter 1.692 (commencing with Section 5096.300) of Division 5 of the Public Resources Code)), but not including funds dedicated as matching funds for the federal Forest Legacy Program, shall be deposited in the fund.

(c) To the extent consistent with the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (the

Villaraigosa-Keeley Act (Chapter 1.692 (commencing with Section 5096.300) of Division 5 of the Public Resources Code)), the board may use money designated for the preservation and restoration of oak woodlands in the Oak Woodlands Conservation Fund for projects in conjunction with the California Forest Legacy Program (Div. 10.5 (commencing with Sec. 12200) of the P.R.C.)), but only for the purposes specified in this article and only if the following requirements are met:

(1) The Department of Forestry and Fire Protection shall make an initial recommendation to the board.

(2) The board may deny any initial recommendation to the Department of Forestry and Fire Protection. Subsequently, if the department alters an initial proposal, in a manner that the board determines to be significant, the board may withdraw its initial approval of the recommendation at any time during the process.

(d) The purposes for which moneys in the fund may be used include all of the following:

(1) Grants for the purchase of oak woodlands conservation easements. Any entity authorized to hold a conservation easement under Section 815.3 of the Civil Code may hold a conservation easement pursuant to this article. The holder of the conservation easement shall ensure, on an annual basis, that the conservation easement conditions have been met for that year.

(2) Grants for land improvement.

(3) Cost-sharing incentive payments to private landowners who enter into long-term conservation agreements. An agreement shall include management practices that benefit oak woodlands and promote the economic sustainability of farming and ranching operations.

(4) Public education and outreach by local government entities, park and open-space districts, resource conservation districts, and nonprofit organizations. The public education and outreach shall identify and communicate the social, economic, agricultural, and biological benefits of strategies to conserve oak woodlands habitat values, including watershed protection benefits that reduce soil erosion, increase streamflows, and increase water retention and sustainable agricultural operations.

(5) Assistance to local government entities, park and open-space districts, resource conservation districts, and nonprofit organizations for the development and implementation of oak conservation elements in local general plans.

(6) Technical assistance consistent with the purpose of preserving oak woodlands.

(e) Not more than 20 percent of all grants made by the board pursuant to this article may be used for the purposes described in paragraphs (4), (5), and (6) of subdivision (d). Not less than 80 percent of funds available

for grants pursuant to this article shall be expended for the purposes described in paragraphs (1), (2), and (3) of subdivision (d).

(f) Notwithstanding any other provision of law, this article governs the expenditure of funds for the preservation of oak woodlands pursuant to paragraph (4) of subdivision (a) of Section 5096.350 of the Public Resources Code.

1363.5. (a) Commencing on June 30, 2003, and annually thereafter, the board shall report to the Legislature and the Governor concerning the activities and expenditures of the fund.

(b) (1) In the first report to the Legislature, the board shall provide its best estimate of the total amount, in terms of acreage, species, and coverage, of oak woodlands habitat purchased with funds from the Habitat Conservation Fund and other funds pursuant to the California Wildlife Protection Act of 1990 (Chapter 9 (commencing with Section 2780) of Division 3.

(2) In each subsequent annual report, the board shall update the information required by paragraph (1) to reflect additional oak woodlands habitat purchased with funds from the Habitat Conservation Fund pursuant to Chapter 9 (commencing with Section 2780) of Division 3, and any purchases made with moneys deposited in the Oak Woodlands Conservation Fund.

(c) The board shall annually provide its best estimate in the report, the acreage, cover, and species of oak woodlands habitat purchased with all moneys from the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Fund.

(d) The board shall make all information available online at its Web site.

(e) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed, unless a later enacted statute that is enacted before January 1, 2021, deletes or extends the dates on which it becomes inoperative and is repealed.

1364. Moneys in the fund shall be available to local government entities, park and open-space districts, resource conservation districts, private landowners, and nonprofit organizations for the purposes set forth in subdivision (d) of Section 1363.

1365. The board shall develop and adopt guidelines and criteria for awarding grants that achieve the greatest lasting conservation of oak woodlands. The board shall develop these guidelines in consultation with the Department of Forestry and Fire Protection, the Department of Food and Agriculture, the University of California's Integrated Hardwood Range Management Program, conservation groups, and farming and ranching associations. As it applies to the award of grants for the implementation of this article, the board criteria shall specify that

easement acquisitions that are the most cost-effective in comparison to the actual resource value of the easement shall be given priority.

1366. (a) To qualify for a grant pursuant to this article, the county or city in which the grant money would be spent shall prepare, or demonstrate that it has already prepared, an oak woodlands management plan that includes a description of all native oak species located within the county's or city's jurisdiction.

(b) To qualify for a grant pursuant to this article, the board shall certify that any proposed easement was not, and is not, required to satisfy a condition imposed upon the landowner by any lease, permit, license, certificate, or other entitlement for use issued by one or more public agencies, including, but not limited to, the mitigation of significant effects on the environment of a project pursuant to an approved environmental impact report or to mitigate a negative declaration required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) of the Public Resources Code.

(c) To qualify for a grant under this article, the applicant shall demonstrate that its proposal provides protection of oak woodlands that is more protective than the applicable provisions of law in existence on the date of the proposal.

(d) A county or city may develop an oak woodlands management plan. A nonprofit corporation, park and open-space district, resource conservation district, or other local government entity may apply to the board for funds to develop an oak woodlands management plan for a county or city, but the county or city shall maintain ultimate authority to approve the oak woodlands management plan.

(e) The process for developing an initial oak woodlands management plan, and the adoption of significant amendments to a plan, as determined by the county or city, are subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(f) A proposal by a local government entity, nonprofit corporation, park and open-space district, private landowner, or resource conservation district for a grant to be expended for the purposes of this article shall be certified by the county or city as being consistent with the oak woodlands management plan of the county or city. If the land covered by the proposal is in the jurisdiction of more than one county or city, each county or city shall certify that the proposal is consistent with the oak woodlands management plan of each county or city.

(g) If two or more entities seek grant funding from the board pursuant to this article for the same jurisdiction, the county or city shall designate which entity shall lead the efforts to manage oak woodlands habitat in the area.

1367. On or before April 1, 2002, the board and the Department of Forestry and Fire Protection shall develop a memorandum of understanding regarding the protection of oak woodlands that does all of the following:

(a) If necessary, creates a specific process for working together to use money from the fund in conjunction with the California Forest Legacy Program Act of 2000 (Division 10.5 (commencing with Section 12200) of the Public Resources Code).

(b) Lists elements a county or city shall include in its oak woodlands management plan. Items included in the plan shall assist a county or a city to specify conservation priorities and prevent oak woodlands habitat fragmentation while minimizing the cost and administrative burden associated with developing the plan. The elements may include any or all of the following:

(1) Tree inventory mapping.

(2) Oak canopy retention standards.

(3) Oak habitat mitigation measures.

(4) A procedure to monitor the effectiveness of the plan and to modify the plan as necessary.

(c) Designates an online repository for oak woodlands management plans that will be easily accessible to the public and any other state agency involved in oak woodlands conservation efforts.

(d) Discusses the relationship between oak woodlands conservation efforts under this article and efforts by other state agencies to protect oak woodlands, including efforts to combat sudden oak death, and outlines a plan, as necessary, for coordinating with these agencies.

1368. The board may not approve a grant to a local government entity, park and open-space district, resource conservation district, or nonprofit organization if the entity requesting the grant has acquired, or proposes to acquire, an oak woodlands conservation easement through the use of eminent domain, unless the owner of the affected lands requests the owner to do so.

1369. A city or county planning department may utilize a grant awarded for the purposes of this article to consult with a citizen advisory committee and appropriate natural resource specialists in order to report publicly to the city council or the board of supervisors on the status of the city's or county's oak woodlands. Each city or county planning department that receives a grant for the purposes of this article shall report to the city council or to the board of supervisors of the county, as appropriate, on the use of those grant funds within one year from the date the grant is received.

1370. No money may be expended from the fund to adopt guidelines or to administer the fund until at least one million dollars ($1,000,000) is deposited in the fund.

1372. Nothing in this article grants any new authority to the board or any other agency, office, or department to affect local policy or land use decisionmaking.

SEC. 3. An amount not less than five million dollars ($5,000,000) and not more than eight million dollars ($8,000,000), as determined by the Wildlife Conservation Board, from moneys in the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Fund available for oak woodlands conservation pursuant to paragraph (4) of subdivision (a) of Section 5096.350 of the Public Resources Code shall be transferred to the Oak Woodlands Conservation Fund created pursuant to Section 1363 of the Fish and Game Code, to be used for the purposes of Article 3.5 (commencing with Section 1360) of Chapter 4 of Division 2 of the Fish and Game Code.

CHAPTER 589

An act to amend Section 4707 of, and to add Section 4703.6 to, the Labor Code, relating to workers' compensation.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 4703.6 is added to the Labor Code, to read:

4703.6. The provisions of Section 4703.5 shall also apply to a totally dependent minor child of a local safety member as defined in Article 4 (commencing with Section 20420) of Chapter 4 of Part 3 of Division 5 of Title 2 of the Government Code, or a patrol member as defined in Section 20390 of the Government Code, if the local safety member or patrol member was killed in the line of duty prior to January 1, 1990, and the totally dependent minor child is otherwise entitled to benefits under Section 4703.5.

SEC. 2. Section 4707 of the Labor Code is amended to read:

4707. (a) Except as provided in subdivision (b), no benefits, except reasonable expenses of burial not exceeding one thousand dollars ($1,000), shall be awarded under this division on account of the death of an employee who is an active member of the Public Employees' Retirement System unless it is determined that a special death benefit, as defined in the Public Employees' Retirement Law, or the benefit provided in lieu of the special death benefit in Sections 21547 and 21548 of the Government Code, will not be paid by the Public Employees' Retirement System to the surviving spouse or children under 18 years

of age, of the deceased, on account of the death, but if the total death allowance paid to the surviving spouse and children is less than the benefit otherwise payable under this division the surviving spouse and children are entitled, under this division, to the difference.

The amendments to this section during the 1977–78 Regular Session shall be applied retroactively to July 1, 1976.

(b) The limitation prescribed by subdivision (a) shall not apply to local safety members, or patrol members, as defined in Section 20390 of the Government Code, of the Public Employees' Retirement System. This subdivision shall be applied retroactively.

CHAPTER 590

An act to add Section 13578 to the Water Code, relating to recycled water.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 13578 is added to the Water Code, to read:

13578. (a) In order to achieve the statewide goal for recycled water use established in Section 13577 and to implement the Governor's Advisory Drought Planning Panel Critical Water Shortage Contingency Plan recommendations, Section F2, as submitted December 29, 2000, the department shall identify and report to the Legislature on opportunities for increasing the use of recycled water, as defined in paragraph (3) of subdivision (b) of Section 13575, and identify constraints and impediments, including the level of state financial assistance available for project construction, to increasing the use of recycled water.

(b) The department shall convene a task force, to be known as the 2002 Recycled Water Task Force, to advise the department in implementation of subdivision (a), including making recommendations to the Legislature regarding the following:

(1) How to further the use of recycled water in industrial and commercial applications, including, but not limited to, those applications set forth in Section 13552.8. The task force shall evaluate the current regulatory framework of state and local rules, regulations, ordinances, and permits to identify the obstacles and disincentives to industrial and commercial reuse. Issues to be investigated include, but are not limited to, applicability of visual inspections instead of pressure

tests for cross-connections between potable and nonpotable water systems, dual piping trenching restrictions, fire suppression system design, and backflow protections.

(2) Changes in the Uniform Plumbing Code, published by the International Association of Plumbing and Mechanical Officials, that are appropriate to facilitate the use of recycled water in industrial and commercial settings. The department shall make recommendations to the California Building Standards Commission with regard to suggested revisions to the California Plumbing Code necessary to incorporate the changes identified by the task force.

(3) Changes in state statutes or the current regulatory framework of state and local rules, regulations, ordinances, and permits appropriate to increase the use of recycled water for commercial laundries and toilet and urinal flushing in structures including, but not limited to, those defined in subdivision (c) of Section 13553. The department shall identify financial incentives to help offset the cost of retrofitting privately and publicly owned structures.

(4) The need to reconvene the California Potable Reuse Committee established by the department in 1993 or convene a successor committee to update the committee's finding that planned indirect potable reuse of recycled water by augmentation of surface water supplies would not adversely affect drinking water quality if certain conditions were met.

(5) The need to augment state water supplies using water use efficiency strategies identified in the CALFED Bay-Delta Program. In its report pursuant to subdivision (a), the department shall identify ways to coordinate with CALFED to assist local communities in educating the public with regard to the statewide water supply benefits of local recycling projects and the level of public health protection ensured by compliance with the uniform statewide water recycling criteria developed by the State Department of Health Services in accordance with Section 13521.

(6) Impediments or constraints, other than water rights, related to increasing the use of recycled water in applications for agricultural, environmental, or irrigation uses, as determined by the department.

(c) (1) The task force shall be convened by the department and be comprised of one representative from each of the following state agencies:

(A) The department.

(B) The State Department of Health Services.

(C) The state board.

(D) The California Environmental Protection Agency.

(E) The CALFED Bay-Delta Program.

(F) The Department of Food and Agriculture.

(G) The Building Standards Commission.

(H) The University of California.

(I) The Resources Agency.

(2) The task force shall also include one representative from a recognized environmental advocacy group and one representative from a consumer advocacy group, as determined by the department, and one representative of local agency health officers, one representative of urban water wholesalers, one representative from a groundwater management entity, one representative of water districts, one representative from a nonprofit association of public and private members created to further the use of recycled water, one representative of commercial real estate, one representative of land development, one representative of industrial interests, and at least two representatives from each of the following as defined in Section 13575:

(A) Recycled water producer.

(B) Recycled water wholesaler.

(C) Retail water supplier.

(d) The department and the task force shall report to the Legislature not later than July 1, 2003.

(e) The department shall carry out the duties of this section only to the extent that funds pursuant to Section 79145, enacted as part of the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act (Division 26 (commencing with Section 79000)), are made available for the purposes of this section.

CHAPTER 591

An act to amend Sections 60451 and 62000.4 of the Education Code, relating to instructional materials.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 60451 of the Education Code is amended to read:

60451. Each school district shall expend funds received pursuant to this chapter for the sole purpose of purchasing instructional materials in the core curriculum that are aligned to content standards for pupils in kindergarten and grades 1 to 12, inclusive, that meet all of the following requirements:

(a) The instructional materials are aligned with content standards adopted by the State Board of Education in 1997 or 1998.

(b) The instructional materials for pupils in kindergarten and grades 1 to 8, inclusive, have been adopted by the State Board of Education pursuant to Chapter 2 (commencing with Section 60200) of Part 33, using criteria aligned to the adopted content standards.

(c) The instructional materials for pupils in grades 9 to 12, inclusive, are basic instructional materials, as defined in subdivision (a) of Section 60010, that have been reviewed and approved, through a resolution adopted by the local governing board, as being aligned with the content standards adopted by the State Board of Education in 1997 or 1998.

(d) Prior to purchase, publishers shall be required to submit standards maps to local districts so that the districts can determine the extent to which instructional materials or combination of instructional materials for pupils in grades 9 to 12, inclusive, are aligned to the content standards adopted by the State Board of Education. The standards maps shall be filled out using a standard form created and approved by the State Board of Education.

SEC. 2. Section 62000.4 of the Education Code is amended to read:

62000.4. The Instructional Materials Program shall sunset on June 30, 2006. The implementation of the Instructional Materials Program during the 2002–03, 2003–04, 2004–05, and 2005–06 fiscal years shall be contingent upon funding in the annual Budget Act.

CHAPTER 592

An act to add and repeal Section 6368.8 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 6368.8 is added to the Revenue and Taxation Code, to read:

6368.8. (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, qualified equipment, provided all of the following conditions are satisfied:

(1) The qualified equipment is sold or leased by a qualified person.

(2) The qualified person has paid sales tax reimbursement or use tax with respect to the qualified person's purchase or acquisition of the qualified equipment.

(3) The qualified equipment is sold or leased by the qualified person and the qualified equipment is leased back to the qualified person.

(b) For purposes of this section:

(1) ''Qualified person'' means an entity that qualifies as a claimant, as defined in Section 99203 of the Public Utilities Code, eligible to receive allocations under the Transportation Development Act (commencing with Section 99200 of the Public Utilities Code).

(2) ''Qualified equipment'' means a vehicle or vessel and any related equipment used in the provision of public transportation services, including, but not limited to, bus and van fleets, ferry boats, rail passenger cars, locomotives, other rail vehicles, train control equipment, fare collection equipment, communication systems, global positioning systems, and other systems and accessories related to the operation of a vehicle or vessel used in the provision of public transportation services.

(c) The exemption provided by this section also applies to subsequent purchases of qualified equipment by a qualified person at the end of the term of a lease or sublease of qualified equipment, provided the provisions of paragraphs (1), (2), and (3) of subdivision (a) are met.

(d) The Legislative Analyst, in consultation with the State Board of Equalization and the Franchise Tax Board, shall conduct a study on the impact of the exemption authorized under this section and shall report to the Legislature, by January 1, 2003, on the following:

(1) The number of persons utilizing the exemption.

(2) The fiscal impact of the exemption, including the total exemption amount and any depreciation claimed for qualified equipment.

(3) The impact, if any, of federal law, including, but not limited to, Revenue Ruling 99-14, on the utilization of the exemption.

(4) The impact of the exemption on California's public transit sector.

(5) A recommendation as to whether the exemption should be extended beyond the January 1, 2004 expiration date, and if it is recommended that the exemption should be extended, recommendations on modifications to the existing exemption provisions that should be implemented.

(e) This section shall remain in effect only until January 1, 2004, and as of that date is repealed.

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first

day of the first calendar month commencing more than 15 days after the effective date of this act.

CHAPTER 593

An act to amend Section 827 of the Civil Code, and to amend Section 50517.5 of the Health and Safety Code, relating to housing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 827 of the Civil Code, as amended by Section 2 of Chapter 680 of the Statutes of 2000, is amended to read:

827. (a) Except as provided in subdivision (b), in all leases of lands or tenements, or of any interest therein, from week to week, month to month, or other period less than a month, the landlord may, upon giving notice in writing to the tenant, in the manner prescribed by Section 1162 of the Code of Civil Procedure, change the terms of the lease to take effect, as to tenancies for less than one month, upon the expiration of a period at least as long as the term of the hiring itself, and, as to tenancies from month to month, to take effect at the expiration of not less than 30 days, but if that change takes effect within a rental term, the rent accruing from the first day of the term to the date of that change shall be computed at the rental rate which obtained immediately prior to that change; provided, however, that it shall be competent for the parties to provide by an agreement in writing that a notice changing the terms thereof may be given at any time not less than seven days before the expiration of a term, to be effective upon the expiration of the term.

The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rents, and conditions specified in the notice, if the tenant shall continue to hold the premises after the notice takes effect.

(b) (1) In all leases of a residential dwelling, or of any interest therein, from week to week, month to month, or other period less than a month, the landlord may increase the rent provided in the lease or rental agreement, upon giving written notice to the tenant, as follows, by either of the following procedures:

(A) By delivering a copy to the tenant personally.

(B) By serving a copy by mail under the procedures prescribed in Section 1013 of the Code of Civil Procedure.

(2) If the proposed rent increase for that tenant is 10 percent or less of the rental amount charged to that tenant at any time during the 12 months prior to the effective date of the increase, either in and of itself or when combined with any other rent increases for the 12 months prior to the effective date of the increase, the notice shall be delivered at least 30 days prior to the effective date of the increase, and subject to Section 1013 of the Code of Civil Procedure if served by mail.

(3) For an increase in rent greater than the amount described in paragraph (2), the minimum notice period required pursuant to that paragraph shall be increased by an additional 30 days, and subject to Section 1013 of the Code of Civil Procedure if served by mail. This paragraph shall not apply to an increase in rent caused by a change in a tenant's income or family composition as determined by a recertification required by statute or regulation.

(c) If a state or federal statute, state or federal regulation, recorded regulatory agreement, or contract provides for a longer period of notice regarding a rent increase than that provided in subdivision (a) or (b), the personal service or mailing of the notice shall be in accordance with the longer period.

(d) This section shall be operative only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2006, deletes or extends that date.

SEC. 2. Section 50517.5 of the Health and Safety Code is amended to read:

50517.5. (a) (1) The department shall establish the Joe Serna, Jr. Farmworker Housing Grant Program under which, subject to the availability of funds therefor, grants or loans, or both, shall be made to local public entities, nonprofit corporations, and limited partnerships, for the construction or rehabilitation of housing for agricultural employees and their families. Under this program, grants or loans, or both, may also be made for the cost of acquiring the land and any building thereon in connection with housing assisted pursuant to this section and for the construction and rehabilitation of related support facilities necessary to the housing. In its administration of this program, the department shall disburse grants or loans, or both, to the local public entities, nonprofit corporations, or limited partnerships or may, at the request of the local public entity, nonprofit corporation, or limited partnership that sponsors and supervises the rehabilitation or construction program, disburse grant funds to agricultural employees who are participants in a rehabilitation or construction program sponsored and supervised by the local public entity, nonprofit

corporation, or limited partnership. No part of a grant or loan made pursuant to this section may be used for project organization or planning.

(2) Notwithstanding any other provision of this chapter, upon the request of a grantee, if funds are used in conjunction with low income housing tax credits, the program also may loan funds to a grantee at no more than 3 percent simple interest. Principal and accumulated interest is due and payable upon completion of the term of the loan. For any loan made pursuant to this subdivision, the performance requirements of the lien shall remain in effect for a period of no less than the original term of the loan.

(3) The program shall be administered by the Director of Housing and Community Development and officers and employees of the department as he or she may designate.

(4) It is the intent of the Legislature that, in administering the program, the director shall facilitate, to the greatest extent possible, the construction and rehabilitation of permanent dwellings for year-round occupancy and ownership by agricultural employees.

(b) (1) The Joe Serna, Jr. Farmworker Housing Grant Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the department for making grants or loans, or both, pursuant to this section, for purposes of Chapter 8.5 (commencing with Section 50710), and for costs incurred by the department in administering these programs.

(2) There shall be paid into the fund the following:

(A) Any moneys appropriated and made available by the Legislature for purposes of the fund.

(B) Any moneys that the department receives in repayment or return of grants or loans from the fund, including any interest therefrom.

(C) Any other moneys that may be made available to the department for the purposes of this chapter from any other source or sources.

(D) All moneys appropriated to the department for the purposes of Chapter 8.5 (commencing with Section 50710) and any moneys received by the department from the occupants of housing or shelter provided pursuant to Chapter 8.5 (commencing with Section 50710). These moneys shall be separately accounted for from the other moneys deposited in the fund.

(c) Grants and loans made pursuant to this section shall be matched by grantees with at least equal amounts of federal moneys, other cash investments, or in-kind contributions.

(d) With respect to the supervision of grantees, the department shall do the following:

(1) Establish minimum capital reserves to be maintained by grantees.

(2) Fix and alter from time to time a schedule of rents that may be necessary to provide residents of housing assisted pursuant to this section with affordable rents to the extent consistent with the maintenance of the financial integrity of the housing project. No grantee shall increase the rent on any unit constructed or rehabilitated with the assistance of funds provided pursuant to this section without the prior permission of the department, which shall be given only if the grantee affirmatively demonstrates that the increase is required to defray necessary operating costs or avoid jeopardizing the fiscal integrity of the housing project.

(3) Determine standards for, and control selection by grantees of, tenants and subsequent purchasers of housing constructed or rehabilitated with the assistance of funds provided pursuant to this section.

(4) (A) Require as a condition precedent to a grant or loan, or both, of funds that the applicant have site control that is satisfactory to the department; that the grantee be record owner in fee of the assisted real property or provide other security that is satisfactory to the department to ensure compliance with the construction, financial and program obligations; and that the grantee shall have entered into a written agreement with the department binding upon the grantee and successors in interest to the grantee. The agreement shall include the conditions under which the funds advanced may be repaid. The agreement shall include provisions for a lien on the assisted real property in favor of the State of California for the purpose of securing performance of the agreement. The agreement shall also provide that the lien shall endure until released by the Director of Housing and Community Development.

(B) In the event that funds granted or loaned pursuant to this section constitute less than 25 percent of the total development cost or value, whichever is applicable, of a project assisted under this section, the department may adopt, by regulation, criteria for determining the number of units in a project to which the restrictions on occupancy contained in the agreement apply. In no event may these regulations provide for the application of the agreement to a percentage of units in a project that is less than the percentage of total development costs that funds granted or loaned pursuant to this section represent.

(C) Contemporaneously with the disbursement of the initial funds to a grantee, the department shall cause to be recorded, in the office of the county recorder of the county in which the assisted real property is located, a notice of lien executed by the Director of Housing and Community Development. The notice of lien shall refer to the agreement required by this paragraph for which it secures and it shall include a legal description of the assisted real property that is subject to the lien. The notice of lien shall be indexed by the recorder in the Grantor Index to the

name of the grantee and in the Grantee Index to the name of the State of California, Department of Housing and Community Development. The department shall adopt by regulation criteria for the determination of the lien period. This regulation shall take into account whether the property is held by multifamily rental, single-family ownership, or cooperative ownership and whether it is new construction or rehabilitative construction.

(D) Pursuant to regulations adopted by the department, the department may execute and cause to be recorded in the office of the recorder of the county in which a notice of lien has been recorded, a subordination of the lien. The regulations adopted by the department shall provide that any subordination of the lien shall not jeopardize the security interest of the state and shall further the interest of farmworker housing. The recitals contained in the subordination shall be conclusive in favor of any bona fide purchaser or lender relying thereon.

(5) Regulate the terms of occupancy agreements or resale controls, to be used in housing assisted pursuant to this section.

(6) Provide bilingual services and publications, or require grantees to do so, as necessary to implement the purposes of this section.

(7) The agreement between the department and the grantee shall provide, among other things, that both of the following occur:

(A) Upon the sale or conveyance of the real property, or any part thereof, for use other than for agricultural employee occupancy, the grantee or its successors shall, as a condition for the release of the lien provided pursuant to paragraph (4), repay to the fund the department's grant and loan funds.

(B) Upon the sale or conveyance of the real property or any part thereof for continued agricultural employee occupancy, the transferee shall assume the obligation of the transferor and the real property shall be transferred to the new owner; provided that the transferee agrees to abide by the agreement entered into between the transferor and the department and that the new owner takes the property subject to the lien provided pursuant to paragraph (4), except that this lien shall, at the time of the transfer of the property to the new owner, be extended for an additional lien period determined by the department pursuant to paragraph (4), and the new owner shall not be credited with the lien period that had run from the time the transferor had acquired the property to the time of transfer to the new owner, unless the department determines that it is in the best interest of the state and consistent with the intent of this section to so credit the lien period to the new owner. However, the lien shall have priority as of the recording date of the lien for the original grantee, pursuant to paragraph (4).

(e) The department may do any of the following with respect to grantees:

(1) Through its agents or employees enter upon and inspect the lands, buildings, and equipment of a grantee, including books and records, at any time before, during, or after construction or rehabilitation of units assisted pursuant to this section. However, there shall be no entry or inspection of any unit that is occupied, whether or not any occupant is actually present, without the consent of the occupant.

(2) Supervise the operation and maintenance of any housing assisted pursuant to this section and order repairs as may be necessary to protect the public interest or the health, safety, or welfare of occupants of the housing.

(f) The department shall include in its annual report required by Section 50408, a current report of the Joe Serna, Jr. Farmworker Housing Grant Program. The report shall include, but need not be limited to, (1) the number of households assisted, (2) the average income of households assisted and the distribution of annual incomes among assisted households, (3) the rents paid by households assisted, (4) the number and amount of grants or loans, or both, made to each grantee in the preceding year, (5) the dollar value of funding derived from sources other than the state for each project receiving a grant or loan, or both, under this section, and an identification of each source, (6) recommendations, as needed, to improve operations of the program and respecting the desirability of extending its application to other groups in rural areas identified by the department as having special need for state housing assistance, and (7) the number of manufactured housing units assisted under this section.

(g) As used in this section:

(1) ''Agricultural employee'' has the same meaning as specified in subdivision (b) of Section 1140.4 of the Labor Code, but also includes any person who works at a packing shed for a labor contractor or other entity that contracts with an agricultural employer in order to perform services in connection with handling, drying, packing, or storing any agricultural commodity in its raw or natural state, whether or not this person is encompassed within the definition specified in subdivision (b) of Section 1140.4 of the Labor Code.

(2) ''Grantee'' means the local public entity, nonprofit corporation, or limited partnership that is awarded the grant or loan, or both, under this section, and, at the request thereof, may include an agricultural employee receiving direct payment of a grant for rehabilitation under this section who occupies the assisted housing both before and after the rehabilitation and may include an agricultural employee receiving direct payment of a grant for construction under this section who will occupy the assisted housing and who is a participant in a rehabilitation or construction program sponsored and supervised by a local public entity, nonprofit corporation, or limited partnership.

(3) ''Housing'' may include, but is not necessarily limited to, conventionally constructed units and manufactured housing.

(4) ''Limited partnership'' means a limited partnership where all of the general partners are nonprofit mutual or public benefit corporations.

(h) The department may offer the assistance offered pursuant to this chapter in any area where there is a substantial unmet need for farmworker housing.

SEC. 2.5. Section 50517.5 of the Health and Safety Code is amended to read:

50517.5. (a) (1) The department shall establish the Joe Serna, Jr. Farmworker Housing Grant Program under which, subject to the availability of funds therefor, grants or loans, or both, shall be made to local public entities, nonprofit corporations, and limited partnerships, for the construction or rehabilitation of housing for agricultural employees and their families. Under this program, grants or loans, or both, may also be made for the cost of acquiring the land and any building thereon in connection with housing assisted pursuant to this section and for the construction and rehabilitation of related support facilities necessary to the housing. In its administration of this program, the department shall disburse grants or loans, or both, to the local public entities, nonprofit corporations, or limited partnerships or may, at the request of the local public entity, nonprofit corporation, or limited partnership that sponsors and supervises the rehabilitation or construction program, disburse grant funds to agricultural employees who are participants in a rehabilitation or construction program sponsored and supervised by the local public entity, nonprofit corporation, or limited partnership. No part of a grant or loan made pursuant to this section may be used for project organization or planning.

(2) Notwithstanding any other provision of this chapter, upon the request of a grantee, if funds are used in conjunction with low-income housing tax credits, the program also may loan funds to a grantee at no more than 3 percent simple interest. Principal and accumulated interest is due and payable upon completion of the term of the loan. For any loan made pursuant to this subdivision, the performance requirements of the lien shall remain in effect for a period of no less than the original term of the loan.

(3) The program shall be administered by the Director of Housing and Community Development and officers and employees of the department as he or she may designate.

(b) (1) The Joe Serna, Jr. Farmworker Housing Grant Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the department for making grants or loans, or both, pursuant to this section and Section 50517.10, for purposes of Chapter 8.5 (commencing

with Section 50710), and for costs incurred by the department in administering these programs.

(2) There shall be paid into the fund the following:

(A) Any moneys appropriated and made available by the Legislature for purposes of the fund.

(B) Any moneys that the department receives in repayment or return of grants or loans from the fund, including any interest therefrom.

(C) Any other moneys that may be made available to the department for the purposes of this chapter from any other source or sources.

(D) All moneys appropriated to the department for the purposes of Chapter 8.5 (commencing with Section 50710) and any moneys received by the department from the occupants of housing or shelter provided pursuant to Chapter 8.5 (commencing with Section 50710). These moneys shall be separately accounted for from the other moneys deposited in the fund.

(c) Grants and loans made pursuant to this section shall be matched by grantees with at least equal amounts of federal moneys, other cash investments, or in-kind contributions.

(d) With respect to the supervision of grantees, the department shall do the following:

(1) Establish minimum capital reserves to be maintained by grantees.

(2) Fix and alter from time to time a schedule of rents that may be necessary to provide residents of housing assisted pursuant to this section with affordable rents to the extent consistent with the maintenance of the financial integrity of the housing project. No grantee shall increase the rent on any unit constructed or rehabilitated with the assistance of funds provided pursuant to this section without the prior permission of the department, which shall be given only if the grantee affirmatively demonstrates that the increase is required to defray necessary operating costs or avoid jeopardizing the fiscal integrity of the housing project.

(3) Determine standards for, and control selection by grantees of, tenants and subsequent purchasers of housing constructed or rehabilitated with the assistance of funds provided pursuant to this section.

(4) (A) Require as a condition precedent to a grant or loan, or both, of funds that the applicant have site control that is satisfactory to the department; that the grantee be record owner in fee of the assisted real property or provide other security that is satisfactory to the department to ensure compliance with the construction, financial, and program obligations; and that the grantee shall have entered into a written agreement with the department binding upon the grantee and successors in interest to the grantee. The agreement shall include the conditions under which the funds advanced may be repaid. The agreement shall

include provisions for a lien on the assisted real property in favor of the State of California for the purpose of securing performance of the agreement. The agreement shall also provide that the lien shall endure until released by the Director of Housing and Community Development.

(B) In the event that funds granted or loaned pursuant to this section constitute less than 25 percent of the total development cost or value, whichever is applicable, of a project assisted under this section, the department may adopt, by regulation, criteria for determining the number of units in a project to which the restrictions on occupancy contained in the agreement apply. In no event may these regulations provide for the application of the agreement to a percentage of units in a project that is less than the percentage of total development costs that funds granted or loaned pursuant to this section represent.

(C) Contemporaneously with the disbursement of the initial funds to a grantee, the department shall cause to be recorded, in the office of the county recorder of the county in which the assisted real property is located, a notice of lien executed by the Director of Housing and Community Development. The notice of lien shall refer to the agreement required by this paragraph for which it secures and it shall include a legal description of the assisted real property that is subject to the lien. The notice of lien shall be indexed by the recorder in the Grantor Index to the name of the grantee and in the Grantee Index to the name of the State of California, Department of Housing and Community Development. The department shall adopt by regulation criteria for the determination of the lien period. This regulation shall take into account whether the property is held by multifamily rental, single-family ownership, or cooperative ownership and whether it is new construction or rehabilitative construction.

(D) Pursuant to regulations adopted by the department, the department may execute and cause to be recorded in the office of the recorder of the county in which a notice of lien has been recorded, a subordination of the lien. The regulations adopted by the department shall provide that any subordination of the lien shall not jeopardize the security interest of the state and shall further the interest of farmworker housing. The recitals contained in the subordination shall be conclusive in favor of any bona fide purchaser or lender relying thereon.

(5) Regulate the terms of occupancy agreements or resale controls, to be used in housing assisted pursuant to this section.

(6) Provide bilingual services and publications, or require grantees to do so, as necessary to implement the purposes of this section.

(7) The agreement between the department and the grantee shall provide, among other things, that both of the following occur:

(A) Upon the sale or conveyance of the real property, or any part thereof, for use other than for agricultural employee occupancy, the

grantee or its successors shall, as a condition for the release of the lien provided pursuant to paragraph (4), repay to the fund the department's grant and loan funds.

(B) Upon the sale or conveyance of the real property or any part thereof for continued agricultural employee occupancy, the transferee shall assume the obligation of the transferor and the real property shall be transferred to the new owner; provided that the transferee agrees to abide by the agreement entered into between the transferor and the department and that the new owner takes the property subject to the lien provided pursuant to paragraph (4), except that this lien shall, at the time of the transfer of the property to the new owner, be extended for an additional lien period determined by the department pursuant to paragraph (4), and the new owner shall not be credited with the lien period that had run from the time the transferor had acquired the property to the time of transfer to the new owner, unless the department determines that it is in the best interest of the state and consistent with the intent of this section to so credit the lien period to the new owner. However, the lien shall have priority as of the recording date of the lien for the original grantee, pursuant to paragraph (4).

(e) The department may do any of the following with respect to grantees:

(1) Through its agents or employees enter upon and inspect the lands, buildings, and equipment of a grantee, including books and records, at any time before, during, or after construction or rehabilitation of units assisted pursuant to this section. However, there shall be no entry or inspection of any unit that is occupied, whether or not any occupant is actually present, without the consent of the occupant.

(2) Supervise the operation and maintenance of any housing assisted pursuant to this section and order repairs as may be necessary to protect the public interest or the health, safety, or welfare of occupants of the housing.

(f) The department shall include in its annual report required by Section 50408, a current report of the Joe Serna, Jr. Farmworker Housing Grant Program. The report shall include, but need not be limited to, (1) the number of households assisted, (2) the average income of households assisted and the distribution of annual incomes among assisted households, (3) the rents paid by households assisted, (4) the number and amount of grants or loans, or both, made to each grantee in the preceding year, (5) the dollar value of funding derived from sources other than the state for each project receiving a grant or loan, or both, under this section, and an identification of each source, (6) recommendations, as needed, to improve operations of the program and respecting the desirability of extending its application to other groups in rural areas identified by the

department as having special need for state housing assistance, and (7) the number of manufactured housing units assisted under this section.

(g) As used in this section:

(1) ''Agricultural employee'' has the same meaning as specified in subdivision (b) of Section 1140.4 of the Labor Code, but also includes any person who works at a packing shed for a labor contractor or other entity that contracts with an agricultural employer in order to perform services in connection with handling, drying, packing, or storing any agricultural commodity in its raw or natural state, whether or not this person is encompassed within the definition specified in subdivision (b) of Section 1140.4 of the Labor Code.

(2) ''Grantee'' means the local public entity, nonprofit corporation, or limited partnership that is awarded the grant or loan, or both, under this section, and, at the request thereof, may include an agricultural employee receiving direct payment of a grant for rehabilitation under this section who occupies the assisted housing both before and after the rehabilitation and may include an agricultural employee receiving direct payment of a grant for construction under this section who will occupy the assisted housing and who is a participant in a rehabilitation or construction program sponsored and supervised by a local public entity, nonprofit corporation, or limited partnership.

(3) ''Housing'' may include, but is not necessarily limited to, conventionally constructed units and manufactured housing.

(4) ''Limited partnership'' means a limited partnership where all of the general partners are nonprofit mutual or public benefit corporations.

(h) The department may provide the assistance offered pursuant to this chapter in any area where there is a substantial unmet need for farmworker housing.

SEC. 3. Notwithstanding the limitations contained in Provision 1 of Item 2240-105-0001 of the Budget Act of 2001, funds provided for use in the Emergency Housing and Assistance Program (Chapter 11.5 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code) may be used for capital development grants specified in paragraph (2) of subdivision (a) of Section 50803 of the Health and Safety Code. In addition, the applicable funding limitations for this item shall be as set forth in subdivision (c) of Section 50802.5 of the Health and Safety Code.

SEC. 4. Section 2 of this bill incorporates amendments to Section 50517.5 of the Health and Safety Code proposed by both this bill and AB 807. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, but this bill becomes operative first, (2) each bill amends Section 50517.5 of the Health and Safety Code, and (3) this bill is enacted after AB 807, in which case Section 50517.5 of the Health and Safety Code, as amended by Section

2 of this bill, shall remain operative only until the operative date of AB 807, at which time Section 2.5 of this bill shall become operative.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to expand housing opportunities for farmworkers and their families, it is necessary that this act take effect immediately.

CHAPTER 594

An act to amend Sections 17980.7 and 17980.9 of the Health and Safety Code, relating to housing.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 17980.7 of the Health and Safety Code is amended to read:

17980.7. If the owner fails to comply with the terms of the order or notice pursuant to Section 17980.6, the following provisions shall apply:

(a) The enforcement agency may seek and the court shall order imposition of the penalties provided for under Chapter 6 (commencing with Section 17995).

(b) (1) The enforcement agency may seek and the court may order the owner to not claim any deduction with respect to state taxes for interest, taxes, expenses, depreciation, or amortization paid or incurred with respect to the cited structure, in the taxable year of the initial order or notice, in lieu of the enforcement agency processing a violation in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code.

(2) If the owner fails to comply with the terms of the order or notice to correct the condition that caused the violation pursuant to subdivision (a) of Section 17980.5, the court may order the owner to not claim these tax benefits for the following year.

(c) The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision. In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of the petition

was served not less than three days prior to filing the petition, pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, to all persons with a recorded interest in the real property upon which the substandard building exists.

(1) In appointing a receiver, the court shall consider whether the owner has been afforded a reasonable opportunity to correct the conditions cited in the notice of violation.

(2) The court shall not appoint any person as a receiver unless the person has demonstrated to the court his or her capacity and expertise to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the building. A court may appoint as a receiver a nonprofit organization or community development corporation. In addition to the duties and powers that may be granted pursuant to this section, the nonprofit organization or community development corporation may also apply for grants to assist in the rehabilitation of the building.

(3) If a receiver is appointed, the owner and his or her agent of the substandard building shall be enjoined from collecting rents from the tenants, interfering with the receiver in the operation of the substandard building, and encumbering or transferring the substandard building or real property upon which the building is situated.

(4) Any receiver appointed pursuant to this section shall have all of the following powers and duties in the order of priority listed in this paragraph, unless the court otherwise permits:

(A) To take full and complete control of the substandard property.

(B) To manage the substandard building and pay expenses of the operation of the substandard building and real property upon which the building is located, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the real property.

(C) To secure a cost estimate and construction plan from a licensed contractor for the repairs necessary to correct the conditions cited in the notice of violation.

(D) To enter into contracts and employ a licensed contractor as necessary to correct the conditions cited in the notice of violation.

(E) To collect all rents and income from the substandard building.

(F) To use all rents and income from the substandard building to pay for the cost of rehabilitation and repairs determined by the court as necessary to correct the conditions cited in the notice of violation.

(G) To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and, with court approval, secure that debt and any moneys owed to the receiver for services performed pursuant to this section with a lien on the real property upon which the substandard building is located. The lien shall

be recorded in the county recorder's office in the county within which the building is located.

(H) To exercise the powers granted to receivers under Section 568 of the Code of Civil Procedure.

(5) The receiver shall be entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages.

(6) If the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the substandard building by any tenant, to the extent that the tenant cannot safely reside in his or her unit, then the receiver shall provide relocation benefits in accordance with subparagraph (A) of paragraph (3) of subdivision (d).

(7) The relocation compensation provided for in this section shall not preempt any local ordinance that provides for greater relocation assistance.

(8) In addition to any reporting required by the court, the receiver shall prepare monthly reports to the state or local enforcement agency which shall contain information on at least the following items:

(A) The total amount of rent payments received.

(B) Nature and amount of contracts negotiated relative to the operation or repair of the property.

(C) Payments made toward the repair of the premises.

(D) Progress of necessary repairs.

(E) Other payments made relative to the operation of the building.

(F) Amount of tenant relocation benefits paid.

(9) The receiver shall be discharged when the conditions cited in the notice of violation have been remedied in accordance with the court order or judgment and a complete accounting of all costs and repairs has been delivered to the court. Upon removal of the condition, the owner, the mortgagee, or any lienor of record may apply for the discharge of all moneys not used by the receiver for removal of the condition and all other costs authorized by this section.

(10) After discharging the receiver, the court may retain jurisdiction for a time period not to exceed 18 consecutive months, and require the owner and the enforcement agency responsible for enforcing Section 17980 to report to the court in accordance with a schedule determined by the court.

(11) The prevailing party in an action pursuant to this section shall be entitled to reasonable attorney's fees and court costs as may be fixed by the court.

(12) The county recorder may charge and collect fees for the recording of all notices and other documents required by this section pursuant to Article 5 (commencing with Section 27360) of Chapter 6 of Division 2 of Title 3 of the Government Code.

(13) Nothing in this section shall be construed to limit those rights available to tenants and owners under any other provision of the law.

(14) Nothing in this section shall be construed to deprive an owner of a substandard building of all procedural due process rights guaranteed by the California Constitution and the United States Constitution, including, but not limited to, receipt of notice of the violation claimed and an adequate and reasonable period of time to comply with any orders which are issued by the enforcement agency or the court.

(d) If the court finds that a building is in a condition which substantially endangers the health and safety of residents pursuant to subdivision (a) of Section 17980.6, upon the entry of any order or judgment, the court shall do all of the following:

(1) Order the owner to pay all reasonable and actual costs of the enforcement agency including, but not limited to, inspection costs, investigation costs, enforcement costs, attorney fees or costs, and all costs of prosecution.

(2) Order that the local enforcement agency shall provide the tenant with notice of the court order or judgment.

(3) (A) Order that if the owner undertakes repairs or rehabilitation as a result of being cited for a notice under this chapter, and if the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the premises by any lawful tenant, so that the tenant cannot safely reside in the premises, then the owner shall provide or pay relocation benefits to each lawful tenant. These benefits shall consist of actual reasonable moving and storage costs and relocation compensation. The actual moving and storage costs shall consist of all of the following:

(i) Transportation of the tenant's personal property to the new location. The new location shall be in close proximity to the substandard premises, except where relocation to a new location beyond a close proximity is determined by the court to be justified.

(ii) Packing, crating, unpacking, and uncrating the tenant's personal property.

(iii) Insurance of the tenant's property while in transit.

(iv) The reasonable replacement value of property lost, stolen, or damaged (not through the fault or negligence of the displaced person, his or her agent or employee) in the process of moving, where insurance covering the loss, theft, or damage is not reasonably available.

(v) The cost of disconnecting, dismantling, removing, reassembling, reconnecting, and reinstalling machinery, equipment, or other personal property of the tenant, including connection charges imposed by utility companies for starting utility service.

(B) (i) The relocation compensation shall be an amount equal to the differential between the contract rent and the fair market rental value

determined by the federal Department of Housing and Urban Development for a unit of comparable size within the area for the period that the unit is being repaired, not to exceed 120 days.

(ii) If the court finds that a tenant has been substantially responsible for causing or substantially contributing to the substandard conditions, then the relocation benefits of this section shall not be paid to this tenant. Each other tenant on the premises who has been ordered to relocate due to the substandard conditions and who is not substantially responsible for causing or contributing to the conditions shall be paid these benefits and moving costs at the time that he or she actually relocates.

(4) Determine the date when the tenant is to relocate, and order the tenant to notify the enforcement agency and the owner of the address of the premises to which he or she has relocated within five days after the relocation.

(5) (A) Order that the owner shall offer the first right to occupancy of the premises to each tenant who received benefits pursuant to subparagraph (A) of paragraph (3), before letting the unit for rent to a third party. The owner's offer on the first right to occupancy to the tenant shall be in writing, and sent by first-class certified mail to the address given by the tenant at the time of relocation. If the owner has not been provided the tenant's address by the tenant as prescribed by this section, the owner shall not be required to provide notice under this section or offer the tenant the right to return to occupancy.

(B) The tenant shall notify the owner in writing that he or she will occupy the unit. The notice shall be sent by first-class certified mail no later than 10 days after the notice has been mailed by the owner.

(6) Order that failure to comply with any abatement order under this chapter shall be punishable by civil contempt, penalties under Chapter 6 (commencing with Section 17995), and any other penalties and fines as are available.

(e) The initiation of a proceeding or entry of a judgment pursuant to this section or Section 17980.6 shall be deemed to be a "proceeding" or "judgment" as provided by paragraph (4) or (5) of subdivision (a) of Section 1942.5 of the Civil Code.

(f) The term "owner," for the purposes of this section, shall include the owner, including any public entity that owns residential real property, at the time of the initial notice or order and any successor in interest who had actual or constructive knowledge of the notice, order, or prosecution.

(g) These remedies shall be in addition to those provided by any other law.

(h) Nothing in this section or in Section 17980.6 shall impair the rights of an owner exercising his or her rights established pursuant to

Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.

SEC. 1.5. Section 17980.7 of the Health and Safety Code is amended to read:

17980.7. If the owner fails to comply within a reasonable time with the terms of the order or notice issued pursuant to Section 17980.6, the following provisions shall apply:

(a) The enforcement agency may seek and the court may order imposition of the penalties provided for under Chapter 6 (commencing with Section 17995).

(b) (1) The enforcement agency may seek and the court may order the owner to not claim any deduction with respect to state taxes for interest, taxes, expenses, depreciation, or amortization paid or incurred with respect to the cited structure, in the taxable year of the initial order or notice, in lieu of the enforcement agency processing a violation in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code.

(2) If the owner fails to comply with the terms of the order or notice to correct the condition that caused the violation pursuant to Section 17980.6, the court may order the owner to not claim these tax benefits for the following year.

(c) The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision. In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of the petition was served not less than three days prior to filing the petition, pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, to all persons with a recorded interest in the real property upon which the substandard building exists.

(1) In appointing a receiver, the court shall consider whether the owner has been afforded a reasonable opportunity to correct the conditions cited in the notice of violation.

(2) The court shall not appoint any person as a receiver unless the person has demonstrated to the court his or her capacity and expertise to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the building. A court may appoint as a receiver a nonprofit organization or community development corporation. In addition to the duties and powers that may be granted pursuant to this section, the nonprofit organization or community development corporation may also apply for grants to assist in the rehabilitation of the building.

(3) If a receiver is appointed, the owner and his or her agent of the substandard building shall be enjoined from collecting rents from the

tenants, interfering with the receiver in the operation of the substandard building, and encumbering or transferring the substandard building or real property upon which the building is situated.

(4) Any receiver appointed pursuant to this section shall have all of the following powers and duties in the order of priority listed in this paragraph, unless the court otherwise permits:

(A) To take full and complete control of the substandard property.

(B) To manage the substandard building and pay expenses of the operation of the substandard building and real property upon which the building is located, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the real property.

(C) To secure a cost estimate and construction plan from a licensed contractor for the repairs necessary to correct the conditions cited in the notice of violation.

(D) To enter into contracts and employ a licensed contractor as necessary to correct the conditions cited in the notice of violation.

(E) To collect all rents and income from the substandard building.

(F) To use all rents and income from the substandard building to pay for the cost of rehabilitation and repairs determined by the court as necessary to correct the conditions cited in the notice of violation.

(G) To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and, with court approval, secure that debt and any moneys owed to the receiver for services performed pursuant to this section with a lien on the real property upon which the substandard building is located. The lien shall be recorded in the county recorder's office in the county within which the building is located.

(H) To exercise the powers granted to receivers under Section 568 of the Code of Civil Procedure.

(5) The receiver shall be entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages.

(6) If the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the substandard building by any tenant, to the extent that the tenant cannot safely reside in his or her unit, then the receiver shall provide relocation benefits in accordance with subparagraph (A) of paragraph (3) of subdivision (d).

(7) The relocation compensation provided for in this section shall not preempt any local ordinance that provides for greater relocation assistance.

(8) In addition to any reporting required by the court, the receiver shall prepare monthly reports to the state or local enforcement agency which shall contain information on at least the following items:

(A) The total amount of rent payments received.

(B) Nature and amount of contracts negotiated relative to the operation or repair of the property.

(C) Payments made toward the repair of the premises.

(D) Progress of necessary repairs.

(E) Other payments made relative to the operation of the building.

(F) Amount of tenant relocation benefits paid.

(9) The receiver shall be discharged when the conditions cited in the notice of violation have been remedied in accordance with the court order or judgment and a complete accounting of all costs and repairs has been delivered to the court. Upon removal of the condition, the owner, the mortgagee, or any lienor of record may apply for the discharge of all moneys not used by the receiver for removal of the condition and all other costs authorized by this section.

(10) After discharging the receiver, the court may retain jurisdiction for a time period not to exceed 18 consecutive months, and require the owner and the enforcement agency responsible for enforcing Section 17980 to report to the court in accordance with a schedule determined by the court.

(11) The prevailing party in an action pursuant to this section shall be entitled to reasonable attorney's fees and court costs as may be fixed by the court.

(12) The county recorder may charge and collect fees for the recording of all notices and other documents required by this section pursuant to Article 5 (commencing with Section 27360) of Chapter 6 of Division 2 of Title 3 of the Government Code.

(13) Nothing in this section shall be construed to limit those rights available to tenants and owners under any other provision of the law.

(14) Nothing in this section shall be construed to deprive an owner of a substandard building of all procedural due process rights guaranteed by the California Constitution and the United States Constitution, including, but not limited to, receipt of notice of the violation claimed and an adequate and reasonable period of time to comply with any orders which are issued by the enforcement agency or the court.

(d) If the court finds that a building is in a condition which substantially endangers the health and safety of residents pursuant to Section 17980.6, upon the entry of any order or judgment, the court shall do all of the following:

(1) Order the owner to pay all reasonable and actual costs of the enforcement agency including, but not limited to, inspection costs, investigation costs, enforcement costs, attorney fees or costs, and all costs of prosecution.

(2) Order that the local enforcement agency shall provide the tenant with notice of the court order or judgment.

(3) (A) Order that if the owner undertakes repairs or rehabilitation as a result of being cited for a notice under this chapter, and if the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the premises by any lawful tenant, so that the tenant cannot safely reside in the premises, then the owner shall provide or pay relocation benefits to each lawful tenant. These benefits shall consist of actual reasonable moving and storage costs and relocation compensation. The actual moving and storage costs shall consist of all of the following:

(i) Transportation of the tenant's personal property to the new location. The new location shall be in close proximity to the substandard premises, except where relocation to a new location beyond a close proximity is determined by the court to be justified.

(ii) Packing, crating, unpacking, and uncrating the tenant's personal property.

(iii) Insurance of the tenant's property while in transit.

(iv) The reasonable replacement value of property lost, stolen, or damaged (not through the fault or negligence of the displaced person, his or her agent or employee) in the process of moving, where insurance covering the loss, theft, or damage is not reasonably available.

(v) The cost of disconnecting, dismantling, removing, reassembling, reconnecting, and reinstalling machinery, equipment, or other personal property of the tenant, including connection charges imposed by utility companies for starting utility service.

(B)(i) The relocation compensation shall be an amount equal to the differential between the contract rent and the fair market rental value determined by the federal Department of Housing and Urban Development for a unit of comparable size within the area for the period that the unit is being repaired, not to exceed 120 days.

(ii) If the court finds that a tenant has been substantially responsible for causing or substantially contributing to the substandard conditions, then the relocation benefits of this section shall not be paid to this tenant. Each other tenant on the premises who has been ordered to relocate due to the substandard conditions and who is not substantially responsible for causing or contributing to the conditions shall be paid these benefits and moving costs at the time that he or she actually relocates.

(4) Determine the date when the tenant is to relocate, and order the tenant to notify the enforcement agency and the owner of the address of the premises to which he or she has relocated within five days after the relocation.

(5) (A) Order that the owner shall offer the first right to occupancy of the premises to each tenant who received benefits pursuant to subparagraph (A) of paragraph (3), before letting the unit for rent to a third party. The owner's offer on the first right to occupancy to the tenant

shall be in writing, and sent by first-class certified mail to the address given by the tenant at the time of relocation. If the owner has not been provided the tenant's address by the tenant as prescribed by this section, the owner shall not be required to provide notice under this section or offer the tenant the right to return to occupancy.

(B) The tenant shall notify the owner in writing that he or she will occupy the unit. The notice shall be sent by first-class certified mail no later than 10 days after the notice has been mailed by the owner.

(6) Order that failure to comply with any abatement order under this chapter shall be punishable by civil contempt, penalties under Chapter 6 (commencing with Section 17995), and any other penalties and fines as are available.

(e) The initiation of a proceeding or entry of a judgment pursuant to this section or Section 17980.6 shall be deemed to be a "proceeding" or "judgment" as provided by paragraph (4) or (5) of subdivision (a) of Section 1942.5 of the Civil Code.

(f) The term "owner," for the purposes of this section, shall include the owner, including any public entity that owns residential real property, at the time of the initial notice or order and any successor in interest who had actual or constructive knowledge of the notice, order, or prosecution.

(g) These remedies shall be in addition to those provided by any other law.

(h) Nothing in this section or in Section 17980.6 shall impair the rights of an owner exercising his or her rights established pursuant to Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.

SEC. 2. Section 17980.9 of the Health and Safety Code is amended to read:

17980.9. Notwithstanding Section 17980, whenever the enforcement agency inspects any vacant single-family dwelling within the City of Los Angeles or the City of San Diego pursuant to this chapter, all of the following shall apply:

(a) If a nuisance exists in any vacant single-family dwelling or upon the lot on which it is situated, the enforcement agency shall, after 15 days' notice to abate the nuisance, institute any appropriate action or proceeding to prevent, restrain, correct, or abate the nuisance.

(b) (1) Whenever the enforcement agency has inspected or caused to be inspected any vacant single-family dwelling and has determined that the building is a substandard dwelling, the enforcement agency shall, after giving 15 days' notice to the owner, commence proceedings to abate the violation by repair, rehabilitation, or demolition of the building. The owner shall have the choice of repairing or demolishing. However, if the owner chooses to repair, the enforcement agency shall

require that the building be brought into compliance according to a reasonable and feasible schedule for expeditious repair. The enforcement agency may require demolition or may itself repair, demolish, or institute any other appropriate action or proceeding, if any of the following occur:

(A) The repair work is not done as scheduled.

(B) The owner does not make a timely choice of repair or demolition.

(C) The owner selects an option that cannot be completed within a reasonable period of time, as determined by the department, for any reason, including, but not limited to, an outstanding judicial or administrative order.

(2) In deciding whether to repair as necessary, the enforcement agency shall give preference to the repair of the building whenever it is economically feasible to do so without having to repair more than 50 percent of the dwelling, as determined by the enforcement agency, and shall give full consideration to the needs for housing as expressed in the local jurisdiction's housing element.

(c) All notices issued by the enforcement agency to correct violations or to abate nuisances shall contain a provision notifying the owner that, in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year.

(d) The enforcement agency may charge the owner of the building for its postage or mileage cost for sending or posting the notices required to be given by this section.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 17980.7 of the Health and Safety Code proposed by both this bill and AB 472. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 17980.7 of the Health and Safety Code, and (3) this bill is enacted after AB 472, in which case Section 1 of this bill shall not become operative.

SEC. 4. Due to the unique circumstances of the City of Los Angeles and the City of San Diego with respect to substandard housing, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, the special legislation contained in Section 2 of this act is necessarily applicable only to the City of Los Angeles and the City of San Diego.

CHAPTER 595

An act to amend Section 16101 of the Corporations Code, and to amend Section 5 of Chapter 504 of the Statutes of 1998, relating to limited liability partnerships.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 16101 of the Corporations Code is amended to read:

16101. As used in this chapter, the following terms and phrases have the following meanings:

(1) ''Business'' includes every trade, occupation, and profession.

(2) ''Debtor in bankruptcy'' means a person who is the subject of either of the following:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

(B) A comparable order under federal, state, or foreign law governing insolvency.

(3) ''Distribution'' means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) (A) ''Foreign limited liability partnership'' means a partnership, other than a limited partnership, formed pursuant to an agreement governed by the laws of another jurisdiction and denominated or registered as a limited liability partnership or registered limited liability partnership under the laws of that jurisdiction (i) in which each partner is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) which is licensed under the laws of the state to engage in the practice of architecture, the practice of public accountancy, or the practice of law, or (iii) which (I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a

majority in interest in each partnership hold interests in or are members of another person, except an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(5) ''Licensed person'' means any person who is duly licensed, authorized, or registered under the provisions of the Business and Professions Code to provide professional limited liability partnership services or who is lawfully able to render professional limited liability partnership services in this state.

(6) (A) ''Registered limited liability partnership'' means a partnership, other than a limited partnership, formed pursuant to an agreement governed by Article 10 (commencing with Section 16951), that is registered under Section 16953 and (i) each of the partners of which is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) is licensed under the laws of the state to engage in the practice of architecture, practice of public accountancy, or the practice of law, or (iii)(I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, other than an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(7) ''Partnership'' means an association of two or more persons to carry on as coowners a business for profit formed under Section 16202, predecessor law, or comparable law of another jurisdiction, and includes, for all purposes of the laws of this state, a registered limited liability partnership, and excludes any partnership formed under Chapter 2 (commencing with Section 15501) or Chapter 3 (commencing with Section 15611).

(8) ''Partnership agreement'' means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(9) ''Partnership at will'' means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(10) ''Partnership interest'' or ''partner's interest in the partnership'' means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(11) ''Person'' means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(12) ''Professional limited liability partnership services'' means the practice of architecture, the practice of public accountancy, or the practice of law.

(13) ''Property'' means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(14) ''State'' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(15) ''Statement'' means a statement of partnership authority under Section 16303, a statement of denial under Section 16304, a statement of dissociation under Section 16704, a statement of dissolution under Section 16805, a statement of conversion or a certificate of conversion under Section 16906, a statement of merger under Section 16915, or an amendment or cancellation of any of the foregoing.

(16) ''Transfer'' includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

(17) The inclusion of the practice of architecture as a professional limited liability partnership service permitted by this section shall extend only until January 1, 2007.

SEC. 2. Section 5 of Chapter 504 of the Statutes of 1998 is amended to read:

Sec. 5. The authorization in this act for registered limited liability partnerships and foreign limited liability partnerships to engage in the practice of architecture shall terminate on January 1, 2007.

CHAPTER 596

An act to amend Section 13401 of, and to add Section 13405 to, the Business and Professions Code, relating to fuels, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 13401 of the Business and Professions Code is amended to read:

13401. (a) ''Sell'' or any of its variants means attempt to sell, offer for sale or assist in the sale of, permit to be sold or offered for sale or delivery, offer for delivery, trade, barter, or expose for sale.

(b) ''Manufacturer'' means manufacturer, refiner, producer, or importer.

(c) ''Petroleum products'' means gasoline, diesel fuel, liquefied petroleum gas only when used as a motor fuel, kerosene, thinner, solvent, liquefied natural gas, pressure appliance fuel, or white gasoline, or any motor fuel, or any oil represented as engine lubricant, engine oil, lubricating or motor oil, or any oil used to lubricate transmissions, gears, or axles.

(d) ''Barrel,'' when applied to petroleum products, consists of 42 gallons.

(e) ''Oil'' means motor oil, engine lubricant, engine oil, lubricating oil, or oils used to lubricate transmissions, gears, or axles.

(f) ''Motor oil'' means engine oil, engine lubricant, or lubricating oil.

(g) ''Gasoline'' means a volatile mixture of liquid hydrocarbons, generally containing small amounts of additives, suitable for use as a fuel in spark-ignition internal combustion engines.

(h) ''Engine fuel'' means any liquid or gaseous matter used for the generation of power in an internal combustion engine. ''Motor fuel'' means ''engine fuel'' when that term is used in this chapter.

(i) ''Motor vehicle fuel'' means any product intended for consumption in an internal combustion engine to produce the power to self-propel a vehicle designed for transporting persons or property on a public street or highway.

(j) ''Diesel fuel'' means any petroleum product offered for sale which meets the standards prescribed for diesel fuel by this chapter.

(k) ''Kerosene'' means any petroleum product offered for sale which meets the standards prescribed for kerosene by this chapter.

(*l*) ''Fuel oil'' means any petroleum product offered for sale which meets the standards prescribed for fuel oil by this chapter.

(m) ''Automotive spark-ignition engine fuel'' means any product used for the generation of power in a spark-ignition internal combustion engine.

(n) ''Compression-ignition engine fuel'' means any product used for the generation of power in a compression-ignition internal combustion engine.

(o) ''Gasoline-oxygenate blend'' means a fuel consisting primarily of gasoline along with a substantial amount of one or more oxygenates. For purposes of this section, ''substantial amount'' means more than 0.35 mass percent oxygen or, if methanol is the only oxygenate, more than 0.15 mass percent oxygen.

(p) ''Oxygenate'' means an oxygen-containing, ashless, organic compound such as an alcohol or ether, which can be used as a fuel or fuel supplement.

(q) ''Developmental engine fuel'' means any experimental automotive spark-ignition engine fuel or compression-ignition fuel which does not meet current standards established by this chapter but has characteristics which may lead to an improved fuel standard or the development of an alternative fuel standard.

SEC. 2. Section 13405 is added to the Business and Professions Code, to read:

13405. The Department of Food and Agriculture may grant a variance from the specifications of this chapter for developmental engine fuels if all of the following conditions apply:

(a) Variances may only be granted to provide for the development of information under controlled test conditions to assist in the creation of chemical and performance standards for engine fuels.

(b) Developmental engine fuel shall only be distributed or sold to fleet-type centrally fueled vehicle and equipment users.

(c) The applicant shall warn all parties in writing of any potential risk associated with the use of the developmental engine fuel.

(d) The applicant shall report information when and as the department may prescribe in order for the department to monitor the progress of the developmental engine fuel technology evaluation.

The applicant for a variance shall comply with all other requirements, terms, and conditions that are contained in regulations adopted by the department to further the purposes and administration of this section.

In granting a variance, the department expresses no opinion as to whether an applicant's developmental engine fuel will perform as represented by the applicant. Nor does the department express any opinion to the extent, if at all, that the developmental engine fuel may be safely and effectively used as a substitute for other spark-ignition or compression-ignition engine fuels without incident. Damages caused by the sale, delivery, storage, handling, and usage of the developmental

engine fuel shall be addressed in accordance with contractual provisions negotiated and agreed upon by the applicant and the user.

The department may withdraw a variance if the applicant does not adhere to the conditions required to obtain the variance or if the department recognizes a high probability of equipment harm with the continued use of the developmental engine fuel or to protect public safety.

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

In order to permit the authorization involving developmental engine fuels granted to the Department of Food and Agriculture to take effect as soon as possible, it is necessary for this act to take effect immediately.

CHAPTER 597

An act to amend Section 13401.3 of the Corporations Code, to amend Sections 14036 and 65089 of, to repeal Sections 14529.5 and 14529.14 of, and to repeal Chapter 5 (commencing with Section 14560) of Part 5.3 of Division 3 of Title 2 of, the Government Code, to amend Section 39 of the Harbors and Navigation Code, to amend Sections 98005, 99317.1, 99317.8, 99317.9, 99317.10, 99318.1, and 99319 of, and to repeal Sections 99317.2 and 99318.4 of, the Public Utilities Code, and to amend Sections 182.7, 182.8, 319, 2108, and 2121 of, and to repeal Sections 172, 183.3, 188.6, and 2105.1 of, the Streets and Highways Code, relating to transportation.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 13401.3 of the Corporations Code is amended to read:

13401.3. As used in this part, ''professional services'' also means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code).

SEC. 2. Section 14036 of the Government Code is amended to read:

14036. (a) The department shall prepare a 10-year State Rail Plan biennially for submission to the Legislature, the Governor, the Public

Utilities Commission, and the California Transportation Commission. The plan shall be submitted to the California Transportation Commission on or before October 1, 1995, and on or before October 1 of each odd-numbered year thereafter, for its advice and consent, and to the Legislature, the Governor, and the Public Utilities Commission by the following March 1. The plan shall consist of a passenger rail element and a freight rail element.

(b) The passenger rail element shall contain all of the following:

(1) For capital and operating subsidies and costs, all actual encumbrances for the prior two fiscal years; and for state operations, all actual expenditures for the prior two fiscal years. All revenues shall be identified by source.

(2) For capital and operating subsidies, estimated encumbrances and revenues for the current year; and for state operations, estimated expenditures for the current year. The department shall use the same format as is required for prior year expenditures pursuant to paragraph (1).

(3) For the budget year and the nine following fiscal years, proposed encumbrances for capital and operating subsidies and costs shall be reported in the same format as is required for the prior year's expenditures. For state operations, proposed expenditures for the budget year shall be reported.

(4) The identification and cost of capital facilities necessary to enhance competitiveness of rail passenger services, including, for each intercity route, a list of at least the three highest priority capital improvement projects, with cost estimates and a funding plan.

(5) A performance evaluation of all services in operation for the two prior years, including performance trends, potential for efficiency and effectiveness, possible improvements, and strategies to achieve that potential. This shall include an evaluation of all feeder bus services, using, among other things, criteria based on ridership levels, break-even points, and levels of growth in service utilization. The number of daily feeder bus runs, if any, that failed to carry even one passenger shall be identified.

(6) A recommendation of a level of and program for services over a 10-year period, including a list of service enhancements on existing and additional routes, with funding and priority recommendations. This shall include identification of feeder bus service improvements and a management and operating plan for achieving these improvements.

(7) An evaluation of reports by regional planning agencies and county transportation commissions on commuter service alternatives in their regions, including presentation of their recommendations.

(8) A map showing all existing intercity and commuter passenger rail routes and services, all proposed intercity and commuter passenger rail

routes and services, and all intercity and commuter passenger rail routes and services that are the subject of feasibility studies.

(9) A report on the expenditure of marketing activities funds for purchases of media advertising of rail passenger services.

This report shall be prepared in consultation with the Public Utilities Commission and the National Rail Passenger Corporation. The department may consult with other agencies, organizations, and persons with expertise. The department shall employ realistic assumptions, using Public Utilities Commission cost data whenever possible, with respect to the level of services it can provide and the cost of these services when developing the program.

(10) A discussion of the department's overall marketing strategy as it relates to the intercity rail passenger service, including feeder bus service, and a report on the expenditure of marketing activities funds for purchases of media advertising of rail passenger services.

(11) A discussion of fare policies and practices, including all of the following:

(A) The relationship of fare policies to ridership and yield, including the impact of (A) a variety of regular fares, including fares such as midweek and other off-peak discounts, (B) discount fare blackouts during certain holiday travel periods on yield and ridership, and (C) discount fares for small groups traveling together.

(B) Lightly traveled route segments where current fares are too high for the demand, and where ridership or yield, or both, would increase with lower fares.

(C) A potential fare policy that would maximize both ridership and yield.

(D) A summary of discussions with Amtrak on the subject of fares.

(c) The freight rail element shall contain all of the following:

(1) Environmental aspects, which shall include air quality, land use, and community impacts.

(2) Financing issues, which shall include a means to obtain federal and state funding.

(3) Rail issues, which shall include regional, intrastate, and interstate issues.

(4) Intermodal connections, which shall include seaports and intermodal terminals.

(5) Current system deficiencies.

(6) Service objectives, such as improving efficiency, accessibility, and safety.

(7) New technology, which shall include logistics and process improvement.

(8) Light density rail line analyses, which shall include traffic density, track characteristics, project selection criteria, and benefit-cost criteria.

SEC. 3. Section 14529.5 of the Government Code is repealed.

SEC. 4. Section 14529.14 of the Government Code is repealed.

SEC. 5. Chapter 5 (commencing with Section 14560) of Part 5.3 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 6. Section 65089 of the Government Code is amended to read:

65089. (a) A congestion management program shall be developed, adopted, and updated biennially, consistent with the schedule for adopting and updating the regional transportation improvement program, for every county that includes an urbanized area, and shall include every city and the county. The program shall be adopted at a noticed public hearing of the agency. The program shall be developed in consultation with, and with the cooperation of, the transportation planning agency, regional transportation providers, local governments, the department, and the air pollution control district or the air quality management district, either by the county transportation commission, or by another public agency, as designated by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county.

(b) The program shall contain all of the following elements:

(1) (A) Traffic level of service standards established for a system of highways and roadways designated by the agency. The highway and roadway system shall include at a minimum all state highways and principal arterials. No highway or roadway designated as a part of the system shall be removed from the system. All new state highways and principal arterials shall be designated as part of the system. Level of service (LOS) shall be measured by Circular 212, by the most recent version of the Highway Capacity Manual, or by a uniform methodology adopted by the agency that is consistent with the Highway Capacity Manual. The determination as to whether an alternative method is consistent with the Highway Capacity Manual shall be made by the regional agency, except that the department instead shall make this determination if either (i) the regional agency is also the agency, as those terms are defined in Section 65088.1, or (ii) the department is responsible for preparing the regional transportation improvement plan for the county.

(B) In no case shall the LOS standards established be below the level of service E or the current level, whichever is farthest from level of service A. When the level of service on a segment or at an intersection fails to attain the established level of service standard, a deficiency plan shall be adopted pursuant to Section 65089.4.

(2) A performance element that includes performance measures to evaluate current and future multimodal system performance for the movement of people and goods. At a minimum, these performance

measures shall incorporate highway and roadway system performance, and measures established for the frequency and routing of public transit, and for the coordination of transit service provided by separate operators. These performance measures shall support mobility, air quality, land use, and economic objectives, and shall be used in the development of the capital improvement program required pursuant to paragraph (5), deficiency plans required pursuant to Section 65089.4, and the land use analysis program required pursuant to paragraph (4).

(3) A travel demand element that promotes alternative transportation methods, including, but not limited to, carpools, vanpools, transit, bicycles, and park-and-ride lots; improvements in the balance between jobs and housing; and other strategies, including, but not limited to, flexible work hours, telecommuting, and parking management programs. The agency shall consider parking cash-out programs during the development and update of the travel demand element.

(4) A program to analyze the impacts of land use decisions made by local jurisdictions on regional transportation systems, including an estimate of the costs associated with mitigating those impacts. This program shall measure, to the extent possible, the impact to the transportation system using the performance measures described in paragraph (2). In no case shall the program include an estimate of the costs of mitigating the impacts of interregional travel. The program shall provide credit for local public and private contributions to improvements to regional transportation systems. However, in the case of toll road facilities, credit shall only be allowed for local public and private contributions which are unreimbursed from toll revenues or other state or federal sources. The agency shall calculate the amount of the credit to be provided. The program defined under this section may require implementation through the requirements and analysis of the California Environmental Quality Act, in order to avoid duplication.

(5) A seven-year capital improvement program, developed using the performance measures described in paragraph (2) to determine effective projects that maintain or improve the performance of the multimodal system for the movement of people and goods, to mitigate regional transportation impacts identified pursuant to paragraph (4). The program shall conform to transportation-related vehicle emission air quality mitigation measures, and include any project that will increase the capacity of the multimodal system. It is the intent of the Legislature that, when roadway projects are identified in the program, consideration be given for maintaining bicycle access and safety at a level comparable to that which existed prior to the improvement or alteration. The capital improvement program may also include safety, maintenance, and rehabilitation projects that do not enhance the capacity of the system but are necessary to preserve the investment in existing facilities.

(c) The agency, in consultation with the regional agency, cities, and the county, shall develop a uniform data base on traffic impacts for use in a countywide transportation computer model and shall approve transportation computer models of specific areas within the county that will be used by local jurisdictions to determine the quantitative impacts of development on the circulation system that are based on the countywide model and standardized modeling assumptions and conventions. The computer models shall be consistent with the modeling methodology adopted by the regional planning agency. The data bases used in the models shall be consistent with the data bases used by the regional planning agency. Where the regional agency has jurisdiction over two or more counties, the data bases used by the agency shall be consistent with the data bases used by the regional agency.

(d) (1) The city or county in which a commercial development will implement a parking cash-out program that is included in a congestion management program pursuant to subdivision (b), or in a deficiency plan pursuant to Section 65089.4, shall grant to that development an appropriate reduction in the parking requirements otherwise in effect for new commercial development.

(2) At the request of an existing commercial development that has implemented a parking cash-out program, the city or county shall grant an appropriate reduction in the parking requirements otherwise applicable based on the demonstrated reduced need for parking, and the space no longer needed for parking purposes may be used for other appropriate purposes.

(e) Pursuant to the federal Intermodal Surface Transportation Efficiency Act of 1991 and regulations adopted pursuant to the act, the department shall submit a request to the Federal Highway Administration Division Administrator to accept the congestion management program in lieu of development of a new congestion management system otherwise required by the act.

SEC. 7. Section 39 of the Harbors and Navigation Code is amended to read:

39. Any construction or development authorized by this division that also constitutes a project within the definition of Section 10105 of the Public Contract Code, when performed by the state, shall be subject to the State Contract Act.

SEC. 8. Section 98005 of the Public Utilities Code is amended to read:

98005. ''Transit'' means the transportation of passengers only and their incidental baggage by means other than by chartered bus, sightseeing bus, or any other motor vehicle not on an individual fare-paying basis, and includes rapid transit. Nothing in this section shall be construed to prohibit the district from leasing its buses to private

certified public carriers or to prohibit the district from providing schoolbus service for the transportation of pupils between their homes and schools.

SEC. 9. Section 99317.1 of the Public Utilities Code is amended to read:

99317.1. (a) Funds appropriated pursuant to subdivision (a) of Section 99317 shall, in addition to the purposes specified in that section, be available for short-line railroad rehabilitation projects, through the state transportation improvement program.

(1) Projects eligible for funding pursuant to this subdivision shall be limited to railroad rehabilitation projects.

(2) To be eligible for funding pursuant to this subdivision, a project proposal shall be submitted by a public entity. The public entity shall submit a project proposal only if it has made a finding, following a public hearing, that rail service on the affected railroad would be in imminent danger of being discontinued without the expenditure of public funds, and that continuation of the service serves a public purpose.

(b) As used in this section, ''short-line railroad'' means any standard gauge railroad which is being, or is planned to be, used for passenger service, other than a class I railroad, as that term is used and applied in federal law.

SEC. 10. Section 99317.2 of the Public Utilities Code is repealed.

SEC. 11. Section 99317.8 of the Public Utilities Code is amended to read:

99317.8. (a) A public agency that has received an allocation for funding of an intermodal transfer station pursuant to subdivision (a) of Section 99317 shall provide for maintaining the station and its appurtenances, including, but not limited to, restroom facilities, in good condition and repair, and in accordance with high standards of cleanliness. As part of its duties in monitoring state-funded rail and bus services, the department shall, at least annually, conduct an unannounced inspection of each facility and make recommendations, if any, to the operating agency. Results of the department's inspections shall be included in the passenger rail element of the State Rail Plan required pursuant to Section 14036 of the Government Code. If appropriate remedial action is not taken, the department may recommend to the commission that future applications for transit capital funding be denied.

(b) The Legislature finds and declares that regular inspections of intermodal stations are necessary to protect the state's capital investment in these essential transportation facilities and to avoid the problems resulting from deferred maintenance.

SEC. 12. Section 99317.9 of the Public Utilities Code is amended to read:

99317.9. The department and the commission shall give reasonable priority to allocations pursuant to subdivision (a) of Section 99317 to station projects that improve access for visitors to state prisons.

SEC. 13. Section 99317.10 of the Public Utilities Code is amended to read:

99317.10. (a) A public entity which has received an allocation for funding of an intermodal transfer station pursuant to subdivision (a) of Section 99317 shall, upon request of the department, authorize state-funded bus service to use the station without any charge to the department or its contractors, and shall assist the department in the placement of signs and informational material designed to alert the public to the availability of the state-funded bus service.

(b) A public entity shall not be eligible to receive an allocation for funding of an intermodal transfer station pursuant to subdivision (a) of Section 99317 unless it first agrees that, upon any future request of the department, it will authorize a state-funded bus service to use the station without any charge to the department or its contractors and it will assist the department in the placement of signs and informational material designed to alert the public to the availability of the state-funded bus service.

(c) For the purpose of this section, ''state-funded bus service'' means any bus service funded pursuant to Section 99316.

SEC. 14. Section 99318.1 of the Public Utilities Code is amended to read:

99318.1. An intercity rail project nominated by the department shall be eligible to compete for funding pursuant to Section 99317 if it is recommended in the passenger rail element of the State Rail Plan prepared pursuant to Section 14036 of the Government Code, or an update to that plan.

SEC. 15. Section 99318.4 of the Public Utilities Code is repealed.

SEC. 16. Section 99319 of the Public Utilities Code is amended to read:

99319. (a) If a rail capital improvement project proposed for funding by the department or a local agency includes as an element the addition or improvement of rail passenger service boarding platforms, those platforms shall be constructed in conformity with applicable rules and orders of the Public Utilities Commission and in such a manner that the top of each platform is not less than eight inches above the adjacent rails, unless the department makes a finding that the circumstances in a particular case warrant otherwise and obtains approval from the Public Utilities Commission for any deviation from its applicable rules and orders.

(b) The requirements of this section apply to all passenger service boarding platforms constructed with funds made available pursuant to

Section 14031.6 of the Government Code, Sections 99234.5, 99234.9 and 99317 of this code, Section 164 of the Streets and Highways Code, and funds made available from the proceeds of state general obligation bonds issued for the purposes of rail capital improvements.

SEC. 17. Section 172 of the Streets and Highways Code is repealed.

SEC. 18. Section 182.7 of the Streets and Highways Code is amended to read:

182.7. (a) Notwithstanding Sections 182 and 182.5, Sections 188, 188.8, and 825 do not apply to the expenditure of an amount of federal funds equal to the amount of federal funds apportioned to the state pursuant to subsection (b)(2) of Section 104 of Title 23 of the United States Code. These funds shall be known as the congestion mitigation and air quality program funds and shall be expended in accordance with Section 149 of Title 23 of the United States Code. The department, the transportation planning agencies, and the metropolitan planning organizations may do all things necessary in their jurisdictions to secure and expend those federal funds in accordance with the intent of federal law and this chapter.

(b) The congestion mitigation and air quality program funds, including any funds to which subsection (c) of Section 110 of Title 23 of the United States Code, as added by subdivision (a) of Section 1310 of Public Law 105-178, applies, shall be apportioned by the department to the metropolitan planning organizations designated pursuant to Section 134 of Title 23 of the United States Code and, in areas where none has been designated, to the transportation planning agency established by Section 29532 of the Government Code. The funds shall be apportioned to metropolitan planning organizations and transportation planning agencies responsible for air quality conformity determinations in federally designated air quality nonattainment and maintenance areas within the state in the manner and in accordance with the formula set forth in subsection (b)(2) of Section 104 of Title 23 of the United States Code. Funds apportioned under this subdivision shall remain available for three federal fiscal years, including the federal fiscal year apportioned.

(c) Notwithstanding subdivision (b), where county transportation commissions have been created by Division 12 (commencing with Section 130000) of the Public Utilities Code, all congestion mitigation and air quality program funds shall be further apportioned by the metropolitan planning organization to the county transportation commission on the basis of relative population within the federally designated air quality nonattainment and maintenance areas after first apportioning to the nonattainment and maintenance areas in the manner and in accordance with the formula set forth in subsection (b)(2) of Section 104 of Title 23 of the United States Code.

In the Monterey Bay region, all congestion mitigation and air quality improvement program funds shall be further apportioned, on the basis of relative population, by the metropolitan planning organization to the regional transportation planning agencies designated under subdivision (b) of Section 29532 of the Government Code.

(d) The department shall notify each metropolitan planning organization, transportation planning agency, and county transportation commission receiving an apportionment under this section, as soon as possible each year, of the amount of obligational authority estimated to be available for expenditure from the federal apportionment. The metropolitan planning organizations, transportation planning agencies, and county transportation commissions, in cooperation with the department, congestion management agencies, cities and counties, and affected transit operators, shall select and program projects in conformance with federal law. Each metropolitan planning organization and transportation planning agency shall, not later than August 1 of each even-numbered year beginning in 1994, submit its transportation improvement program prepared pursuant to Section 134 of Title 23 of the United States Code to the department for incorporation into the state transportation improvement program.

(e) Not later than July 1 of each year, the metropolitan planning organizations and the regional transportation planning agencies receiving obligational authority under this section, shall notify the department of the projected amount of obligational authority that each entity intends to use during the remainder of the current federal fiscal year, including, but not limited to, a list of projects that will use the obligational authority. Any federal obligational authority that will not be used shall be redistributed by the department to other projects in a manner that ensures that the state will continue to compete for and receive increased obligational authority during the federal redistribution of obligational authority. If the department does not have sufficient federal apportionments to fully use excess obligational authority, the metropolitan planning organization or transportation planning agency relinquishing obligational authority shall make sufficient apportionments available to the department to fund alternate projects, when practical, within the geographical areas relinquishing the obligational authority. Notwithstanding this subdivision, the department shall comply with subsection (f) of Section 133 of Title 23 of the United States Code.

(f) The department shall be responsible for closely monitoring the use of federal transportation funds, including congestion management and air quality funds to assure full and timely use. The department shall prepare a quarterly report for submission to the commission regarding the progress in use of all federal transportation funds. The department

shall notify the commission and the appropriate implementation agency whenever there is a failure to use federal funds within the three-year apportionment period established under subdivision (b).

(g) The department shall provide written notice to implementing agencies when there is one year remaining within the three-year apportionment period established under subdivision (b).

(h) Within six months of the date of notification required under subdivision (g), the implementing agency shall provide to the department a plan to obligate funds that includes, but need not be limited to, a list of projects and milestones.

(i) If the implementing agency has not met the milestones established in the implementation plan required under subdivision (h), prior to the end of the three-year apportionment period established under subdivision (b), the commission shall redirect those funds for use on other transportation projects in the state.

(j) Congestion mitigation and air quality program funds available under this section exchanged pursuant to Section 182.8 may be loaned to and expended by the department. The department shall repay to the Traffic Congestion Relief Fund all funds received as federal reimbursements for funds exchanged under Section 182.8 as they are received from the Federal Highway Administration.

SEC. 18.5. Section 182.7 of the Streets and Highways Code is amended to read:

182.7. (a) Notwithstanding Sections 182 and 182.5, Sections 188, 188.8, and 825 do not apply to the expenditure of an amount of federal funds equal to the amount of federal funds apportioned to the state pursuant to subsection (b)(2) of Section 104 of Title 23 of the United States Code. These funds shall be known as the congestion mitigation and air quality program funds and shall be expended in accordance with Section 149 of Title 23 of the United States Code. The department, the transportation planning agencies, and the metropolitan planning organizations may do all things necessary in their jurisdictions to secure and expend those federal funds in accordance with the intent of federal law and this chapter.

(b) The congestion mitigation and air quality program funds, including any funds to which subsection (c) of Section 110 of Title 23 of the United States Code, as added by subdivision (a) of Section 1310 of Public Law 105-178, applies, shall be apportioned by the department to the metropolitan planning organizations designated pursuant to Section 134 of Title 23 of the United States Code and, in areas where none has been designated, to the transportation planning agency established by Section 29532 of the Government Code. The funds shall be apportioned to metropolitan planning organizations and transportation planning agencies responsible for air quality conformity

determinations in federally designated air quality nonattainment and maintenance areas within the state in the manner and in accordance with the formula set forth in subsection (b)(2) of Section 104 of Title 23 of the United States Code. Funds apportioned under this subdivision shall remain available for three federal fiscal years, including the federal fiscal year apportioned.

(c) Notwithstanding subdivision (b), where county transportation commissions have been created by Division 12 (commencing with Section 130000) of the Public Utilities Code, all congestion mitigation and air quality program funds shall be further apportioned by the metropolitan planning organization to the county transportation commission on the basis of relative population within the federally designated air quality nonattainment and maintenance areas after first apportioning to the nonattainment and maintenance areas in the manner and in accordance with the formula set forth in subsection (b)(2) of Section 104 of Title 23 of the United States Code.

In the Monterey Bay region, all congestion mitigation and air quality improvement program funds shall be further apportioned, on the basis of relative population, by the metropolitan planning organization to the regional transportation planning agencies designated under subdivision (b) of Section 29532 of the Government Code.

(d) The department shall notify each metropolitan planning organization, transportation planning agency, and county transportation commission receiving an apportionment under this section, as soon as possible each year, of the amount of obligational authority estimated to be available for expenditure from the federal apportionment. The metropolitan planning organizations, transportation planning agencies, and county transportation commissions, in cooperation with the department, congestion management agencies, cities and counties, and affected transit operators, shall select and program projects in conformance with federal law. Each metropolitan planning organization and transportation planning agency shall, not later than August 1 of each even-numbered year beginning in 1994, submit its transportation improvement program prepared pursuant to Section 134 of Title 23 of the United States Code to the department for incorporation into the state transportation improvement program.

(e) Not later than July 1 of each year, the metropolitan planning organizations and the regional transportation planning agencies receiving obligational authority under this section, shall notify the department of the projected amount of obligational authority that each entity intends to use during the remainder of the current federal fiscal year, including, but not limited to, a list of projects that will use the obligational authority. Any federal obligational authority that will not be used shall be redistributed by the department to other projects in a

manner that ensures that the state will continue to compete for and receive increased obligational authority during the federal redistribution of obligational authority. If the department does not have sufficient federal apportionments to fully use excess obligational authority, the metropolitan planning organization or transportation planning agency relinquishing obligational authority shall make sufficient apportionments available to the department to fund alternate projects, when practical, within the geographical areas relinquishing the obligational authority. Notwithstanding this subdivision, the department shall comply with subsection (f) of Section 133 of Title 23 of the United States Code.

(f) The department shall be responsible for closely monitoring the use of federal transportation funds, including congestion management and air quality funds to assure full and timely use. The department shall prepare a quarterly report for submission to the commission regarding the progress in use of all federal transportation funds. The department shall notify the commission and the appropriate implementation agency whenever there is a failure to use federal funds within the three-year apportionment period established under subdivision (b).

(g) The department shall provide written notice to implementing agencies when there is one year remaining within the three-year apportionment period established under subdivision (b).

(h) Within six months of the date of notification required under subdivision (g), the implementing agency shall provide to the department a plan to obligate funds that includes, but need not be limited to, a list of projects and milestones.

(i) If the implementing agency has not met the milestones established in the implementation plan required under subdivision (h), prior to the end of the three-year apportionment period established under subdivision (b), the commission shall redirect those funds for use on other transportation projects in the state.

(j) Congestion mitigation and air quality program funds available under this section exchanged pursuant to Section 182.8 may be loaned to and expended by the department. The department shall repay from the State Highway Account to the Traffic Congestion Relief Fund all funds received as federal reimbursements for funds exchanged under Section 182.8 as they are received from the Federal Highway Administration, except that those repayments are not required to be made more frequently than on a quarterly basis.

SEC. 19. Section 182.8 of the Streets and Highways Code is amended to read:

182.8. (a) It is the intent of the Legislature that this program help increase flexibility in the use of state and federal funding to complete transportation improvements. The ability to exchange certain federal

funds for state funds may enhance that flexibility. However, it is the intent of the Legislature that the commission make these exchanges only if the exchanges do not compromise other state funded projects or activities.

(b) The commission shall propose guidelines and procedures to implement this section, hold a public hearing on the guidelines, and adopt the guidelines on or before February 1, 2001. The commission shall begin the exchange program on or before February 1, 2001, if it determines that funding is available for that purpose. The commission may amend its guidelines after holding a public hearing, but may not amend the guidelines between the time it notifies regional transportation planning agencies of the amount of state funds available for exchange and its approval of projects for exchange in any given year.

(c) On or before January 5 of each year, the department shall report to the commission the amounts apportioned as federal local assistance in the regional surface transportation and congestion mitigation and air quality programs for the year, the Federal Obligation Authority for the year, and the amount of federal funds it expects to be able to obligate for work on projects in all programs on or before September 30 of that year, and the commission, in cooperation with the department, shall determine the amount of state funds from the Traffic Congestion Relief Fund that can be made available for exchange under this section. If the release of federal apportionments and obligational authority is delayed beyond November 1 in any year, all the dates specified in this section shall be extended by an equivalent time, however, all federal funds exchanged shall be obligated on or before September 30 of the current federal fiscal year.

(d) The commission may exchange funds under this section if it determines all of the following:

(1) Adequate state funds are available to accomplish the exchange without putting at risk other transportation activities or projects needing state funds.

(2) Any exchange will be consistent with full implementation of the Traffic Congestion Relief Act of 2000.

(3) Federal funds received in exchange can be readily and effectively used on other projects or activities by the state during the federal fiscal year.

(e) After making the determinations set forth in subdivision (d) the commission may offer to exchange state funds from the Traffic Congestion Relief Fund for federal local assistance funds, subject to the limits imposed under this section. For the purpose of this section, ''federal local assistance'' funds means regional surface transportation program or congestion mitigation and air quality program

apportionments received that federal fiscal year and apportioned as local assistance pursuant to Sections 182.6 and 182.7.

(f) Not later than February 1 of each year, the commission shall notify the regional transportation planning agencies of the amount of state funds available for exchange for federal local assistance funds for that year. The maximum amount of state funds to be exchanged may not exceed 50 percent of the total amount of federal regional surface transportation program and congestion mitigation and air quality program funds apportioned for the current fiscal year as local assistance pursuant to subdivision (b) of Section 182.6 and subdivision (b) of Section 182.7, exclusive of state funds that may be exchanged pursuant to subdivision (g) of Section 182.6, paragraphs (1) and (2) of subdivision (h) of Section 182.6, or Section 182.7. Federal funds exchanged under this program shall be available for projects identified by the commission as ready to obligate during determination of the amount available for exchange. The amount of exchange may not exceed the department's ability to obligate all federal funds during the current federal fiscal year. The commission may not exchange state funds for regional surface transportation program funds required to be spent for transportation enhancements. This section does not affect the amount of exchange under subdivision (g) of Sections 182.6, or paragraphs (1) and (2) of subdivision (h) of Section 182.6.

(g) Regional transportation planning agencies may submit applications for exchange of funds to the commission not later than March 15 of each year. Applications shall identify the proposed use for the exchange funds, including project descriptions, cost estimates, scopes of work, schedules for construction, schedules for expenditures, and any other information required by the commission. The commission may require a region to identify priorities among applications it submits.

(h) If the commission receives applications for more exchange funds than the amount of state funds available, the commission shall select projects for exchange up to the amount of state funds available. The commission shall explain the criteria it uses to select projects, which shall include, but are not limited to, all of the following:

(1) Removal of all federal funds from projects.

(2) Assessment of projects that would benefit most from removal of federal funding because of size, type, location, agency capability, features, or federal requirements.

(3) Approximate relative equity within the program among regions in receiving state exchange funds over a multiyear period.

(i) The commission may exchange state funds for federal local assistance funds with agencies requesting exchanges. Agencies wishing to exchange their federal funds shall provide apportionments and obligation authority at the same rate the Federal Highway

Administration distributes obligation authority. Agencies exchanging federal funds shall receive funds equal to 90 percent of the obligation authority exchanged. The commission shall approve exchanges of funds not later than its second regularly scheduled meeting following March 15 each year.

(j) The commission shall determine an exchange payment schedule based on expenditure plans. The commission may suspend exchange payment schedules if it determines projects are not proceeding.

(k) For financial display and reporting purposes, obligational authority received pursuant to this section shall be reported as a revenue accrual in the Traffic Congestion Relief Fund in the year in which the exchange is approved under subdivision (i). Funds approved for exchange shall be accrued as expenditures in the year in which the exchange is approved. Notwithstanding Section 16362 of the Government Code, the department shall repay from the State Highway Account to the Traffic Congestion Relief Fund all funds received as federal reimbursements for funds exchanged under this section as they are received from the Federal Highway Administration, except that those repayments are not required to be made more frequently than on a quarterly basis.

(*l*) State funds provided through an exchange under this section shall be encumbered within one year and expended within three years.

(m) Upon adoption of its implementing guidelines, the commission may consider requests for exchanges under this section.

(n) Regional and local agencies shall use state exchange funds only for projects or purposes for which the federal local assistance funds being exchanged were originally intended, and may not supplant local funds on projects in order that those local funds can subsequently be used for nontransportation purposes. The commission may require agencies to certify that they are meeting this requirement. Agencies not meeting this maintenance of effort requirement may not be allowed to participate in the next exchange cycle.

(o) The commission shall include a summary of exchanges made pursuant to this section in its annual report to the Governor and Legislature pursuant to Section 14556.36, including an assessment of progress in implementing projects funded by exchanges, and discussion of issues and recommendations related to implementation of the exchange program.

(p) Not later than the effective date of the reauthorization of the federal surface transportation act, the commission shall submit a report to the Governor and the Legislature recommending any changes in the exchange program necessitated by that reauthorization.

SEC. 19.5. Section 183.3 of the Streets and Highways Code is repealed.

SEC. 20. Section 188.6 of the Streets and Highways Code is repealed.

SEC. 21. Section 319 of the Streets and Highways Code, as amended by Section 1 of Chapter 172 of the Statutes of 1999, is amended to read:

319. (a) Route 19 is from Route 1 near Long Beach to Route 164 near Pico Rivera.

(b) The portion of Route 19 that is between Del Amo Boulevard in the City of Long Beach and Route 1 in that city shall cease to be a state highway pursuant to the terms of a cooperative agreement between the City of Long Beach and the department providing for the relinquishment of that portion of the highway to that city.

(c) (1) The commission may relinquish to the City of Downey the portion of Route 19 located between Century Boulevard and Telegraph Road within that city, upon terms and conditions the commission finds to be in the best interests of the state and pursuant to the terms of a cooperative agreement between the City of Downey and the department.

(2) A relinquishment under this subdivision shall become effective immediately following the county recorder's recordation of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(d) (1) The commission may relinquish to the City of Bellflower the portion of Route 19 located between the southerly city limit of the City of Bellflower near Rose Avenue and Foster Road within that city, upon terms and conditions the commission finds to be in the best interests of the state and pursuant to the terms of a cooperative agreement between that city and the department.

(2) A relinquishment under this subdivision shall become effective immediately following the county recorder's recordation of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(e) Any portion of Route 19 relinquished pursuant to subdivision (c) or (d) shall cease to be a state highway on the effective date of the relinquishment.

(f) This section shall become inoperative on the effective date of the relinquishment described in subdivision (c) or (d), whichever date is later, and as of January 1 following that date is repealed.

SEC. 22. Section 319 of the Streets and Highways Code, as added by Section 2 of Chapter 172 of the Statutes of 1999, is amended to read:

319. (a) Route 19 is from:

(1) Del Amo Boulevard near Long Beach to the southerly city limit of the City of Bellflower near Rose Avenue in the City of Bellflower.

(2) The Downey city limit at Telegraph Road to Route 164 (Galatin Road) near Pico Rivera.

(b) This section shall become operative on the later date, as between the effective date of the relinquishment by the commission to the City of Downey of the portion of Route 19 located between Century Boulevard and Telegraph Road within the City of Downey, pursuant to subdivision (c) of Section 319, and the effective date of the relinquishment by the commission to the City of Bellflower of the portion of Route 19 located between the southerly city limit of the City of Bellflower near Rose Avenue and Foster Road within the City of Bellflower, pursuant to subdivision (d) of Section 319, as that section read on the day before it was repealed pursuant to the act that amended this section during the 2001–02 Regular Session.

SEC. 23. Section 2105.1 of the Streets and Highways Code is repealed.

SEC. 24. Section 2108 of the Streets and Highways Code is amended to read:

2108. The balance of the money in the Highway Users Tax Account in the Transportation Tax Fund, after making the apportionments or appropriations, as the case may be, pursuant to Sections 2104 to 2107.7, inclusive, shall be transferred to the State Highway Account in the State Transportation Fund for expenditure in accordance with Section 163.

SEC. 25. Section 2121 of the Streets and Highways Code is amended to read:

2121. (a) In May of each year each county shall submit to the department any additions or exclusions from its mileage of maintained county highways, specifying the termini and mileage of each route added or excluded from its county maintained roads. The department shall either approve or disapprove each inclusion or exclusion. A county may appeal any disapproval as provided in Section 74. The department shall certify county mileage figures to the Controller, as required. No appeal shall affect any apportionment made by the Controller pending the determination of the appeal. If, on appeal, additional mileage is allowed the county, the department shall immediately certify the corrected figure to the Controller, and the same shall be used for subsequent apportionments.

(b) Upon relinquishing any state highway or portion thereof to a county, the department shall immediately certify to the Controller the mileage so relinquished and the same shall immediately be added to the county's maintained mileage of county roads for purposes of subsequent apportionments.

SEC. 26. (a) The Department of Transportation, in consultation with the Office of Planning and Research, shall conduct a statewide rail transportation assessment. The assessment shall be conducted in cooperation with regional and local transportation agencies and private freight railroads. The assessment shall incorporate both a passenger and

a freight rail systems portion. The passenger rail systems portion of the assessment shall include intercity, commuter, and urban rail systems.

(b) (1) Based on the assessment, the department shall prepare a report. The assessment and report shall do all of the following:

(A) Examine how the different modes of rail transportation interconnect with each other and with other forms of transportation. The assessment shall investigate where there are gaps in connectivity between passenger rail systems. The report shall make recommendations for improving connectivity for passenger and freight rail.

(B) Identify where there are currently high levels of freight and passenger rail track congestion and where agencies project future rail congestion problems. The report shall make recommendations for capital projects that would alleviate or prevent the onset of track congestion.

(C) Report on plans for capital projects for each rail transportation agency, both public and private, over the next 10 years. Capital projects include improvements that enhance public safety, including, but not limited to, grade crossing separations, that increase track capacity, including, but not limited to, passing tracks or siding, and that increase passenger services, including, but not limited to, additional passenger cars and locomotives. The report shall identify where plans for capital improvements or services by one rail agency will conflict with plans for capital improvements or services with another rail agency.

(D) Examine the cost effectiveness of current findings for rail projects.

(2) Based on findings from the assessment described in subdivision (a), the report shall include an estimate, with documentation, of statewide unfunded capital and operating needs over the next 10 years for each rail transportation agency.

(c) The department shall submit the report required under this section to the Legislature on or before October 1, 2002.

SEC. 27. Section 18.5 of this bill incorporates amendments to Section 182.7 of the Streets and Highways Code proposed by both this bill and Assembly Bill 1705. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 182.7 of the Streets and Highways Code, and (3) this bill is enacted after Assembly Bill 1705, in which case Section 182.7 of the Streets and Highways Code as amended by Assembly Bill 1705, shall remain operative only until the operative date of this bill, at which time Section 18.5 of this bill shall become operative, and Section 18 of this bill shall not become operative.

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CHAPTER 598

An act to add Section 35178.4 to the Education Code, relating to school board members, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 35178.4 is added to the Education Code, to read:

35178.4. A school board shall give official notice at a regularly scheduled school board meeting if a public school within the district that has elected to be accredited by the Western Association of Schools and Colleges or any other chartered accrediting agency loses its accreditation status. If a school loses its accreditation status, the school district shall notify each parent or guardian of the pupils in the school that the school has lost its accreditation status, in writing, and this notice shall indicate the potential consequences of the school's loss of accreditation status.

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.

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:

To ensure that parents are adequately notified of the accreditation status of their schools, it is necessary that this act take effect immediately as an urgency statute.

CHAPTER 599

An act to amend Section 1011.7 of the Military and Veterans Code, relating to veterans.

[Approved by Governor October 7, 2001. Filed with
Secretary of State October 9, 2001.]

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

SECTION 1. Section 1011.7 of the Military and Veterans Code is amended to read:

1011.7. (a) There is hereby created a Governor's Commission on Veterans Homes to advise the Governor and the Legislature on the establishment of veterans homes in California.

(b) The commission shall consist of 12 members as follows:

(1) A member of the Veterans of Foreign Wars, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the Veterans of Foreign Wars.

(2) A member of the American Legion, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the American Legion.

(3) A member of the Disabled American Veterans, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the Disabled American Veterans.

(4) A member of the AmVets, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the AmVets.

(5) Three veterans, as defined by Section 980, appointed by the Governor.

(6) Two members appointed by the Speaker of the Assembly, one of whom shall be a veteran, as defined by Section 980, and one of whom shall serve as an ex officio, nonvoting member.

(7) Two members appointed by the Senate Committee on Rules, one of whom shall be a veteran, as defined by Section 980, and one of whom shall serve as an ex officio, nonvoting member.

(8) The Secretary of Veterans Affairs or his or her designee.

(c) (1) In making appointments pursuant to paragraphs (1) to (4), inclusive, of subdivision (b), the Governor shall consult with the leadership of the veterans organizations specified in those paragraphs.

(2) Notwithstanding any other provision of law, gubernatorial appointments made pursuant to subdivision (b) shall not be subject to the approval of the Senate.

(d) The Governor shall select one of the members to serve as chairperson.

(e) The commission shall hold a minimum of four public meetings at times and places as it shall determine.

(f) (1) Each member shall receive, for each day's attendance at each meeting of the commission, a per diem of fifty dollars ($50) and shall

receive the same per diem for each day spent on official duties assigned by the commission.

(2) Each member shall be reimbursed for his or her necessary traveling and other expenses incurred in the performance of his or her official duties.

State agencies, including those identified in subdivision (j), may pay a portion of the commission's expenses.

(g) (1) The commission shall establish findings and make recommendations to the Governor and the Legislature on the establishment of veterans homes in California. The findings and recommendations may include, but need not be limited to, the following matters:

(A) Possible sites for one or more state veterans homes. This recommendation shall give consideration to the availability of federal surplus property and any property available for no cost, or at less than market value, from public or private sources, and to a competitive site-selection process that would compare the relative merits of all available sites, including, but not limited to, Shasta County, the Central Valley, and Los Angeles County.

(B) Selection of a site specifically for the treatment of veterans who suffer from Alzheimer's disease or other diseases causing dementia. Preference should be given to a site with access to an existing medical teaching or research facility.

(C) The scope and level of health care, residential care, and recreational facilities, and other services and amenities to be provided at each home.

(D) The number of sites to be established and the resident population to be served at each site, including a description of the type, size, and projected population of each of the residential components of the home, including, but not limited to, skilled nursing care beds, intermediate care beds, domiciliary care, independent living facilities, and day care facilities.

(E) Estimates of design and planning costs, land acquisition costs, capital construction costs, and annual operating costs of each home that would be associated with various modes of construction.

(F) Financing options for the development and construction of a home on one or more sites that shall include, but not be limited to, financial assistance available through the federal Department of Veterans Affairs State Home Grants Program.

(G) The management of each home by state or private administration.

(2) For the purposes of paragraph (1), the commission shall hear testimony from interested citizens concerning the needs of veterans in California.

(h) Notwithstanding Section 7550.5 of the Government Code, the commission shall report to the Governor and the Legislature on or before October 1, 2001, concerning its findings and recommendations, as specified in subdivision (g), for the development and construction activities associated with veterans homes in California.

(i) (1) Any new veterans homes sites recommended by the Governor's Commission on Veterans Homes shall be in addition to, and any new homes shall be built after, those listed in Section 1011.

(2) Priority for new veterans home sites shall be in areas that have been underserved, specifically in the San Joaquin Valley and the Los Angeles Basin.

(j) State agencies, including, but not limited to, the Governor's Office of Planning and Research, the Department of Veterans Affairs, the office of the Treasurer, and the Project Management Branch within the Real Estate Services Division of the Department of General Services, may provide staff assistance to the commission upon its request.

(k) The commission may solicit and accept private donations, through the secretary, from any person, association, or entity interested in veterans benefits.

(*l*) 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. 1.5. Section 1011.7 of the Military and Veterans Code is amended to read:

1011.7. (a) There is hereby created a Governor's Commission on Veterans Homes to advise the Governor and the Legislature on the establishment of veterans homes in California.

(b) The commission shall consist of 12 members as follows:

(1) A member of the Veterans of Foreign Wars, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the Veterans of Foreign Wars.

(2) A member of the American Legion, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the American Legion.

(3) A member of the Disabled American Veterans, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the Disabled American Veterans.

(4) A member of the AmVets, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the AmVets.

(5) Three veterans, as defined by Section 980, appointed by the Governor.

(6) Two members appointed by the Speaker of the Assembly, one of whom shall be a veteran, as defined by Section 980, and one of whom shall serve as an ex officio, nonvoting member.

(7) Two members appointed by the Senate Committee on Rules, one of whom shall be a veteran, as defined by Section 980, and one of whom shall serve as an ex officio, nonvoting member.

(8) The Secretary of Veterans Affairs or his or her designee.

(c) (1) In making appointments pursuant to paragraphs (1) to (4), inclusive, of subdivision (b), the Governor shall consult with the leadership of the veterans organizations specified in those paragraphs.

(2) Notwithstanding any other provision of law, gubernatorial appointments made pursuant to subdivision (b) shall not be subject to the approval of the Senate.

(d) The Governor shall select one of the members to serve as chairperson.

(e) The commission shall hold a minimum of four public meetings at times and places as it shall determine.

(f) (1) Each member shall receive, for each day's attendance at each meeting of the commission, a per diem of fifty dollars ($50) and shall receive the same per diem for each day spent on official duties assigned by the commission.

(2) Each member shall be reimbursed for his or her necessary traveling and other expenses incurred in the performance of his or her official duties.

State agencies, including those identified in subdivision (j), may pay a portion of the commission's expenses.

(g) (1) The commission shall establish findings and make recommendations to the Governor and the Legislature on the establishment of veterans homes in California. The findings and recommendations may include, but need not be limited to, the following matters:

(A) Possible sites for one or more state veterans homes. This recommendation shall give consideration to the availability of federal surplus property and any property available for no cost, or at less than market value, from public or private sources, and to a competitive site-selection process that would compare the relative merits of all available sites, including, but not limited to, Shasta County, the Central Valley, and Los Angeles County.

(B) Selection of a site specifically for the treatment of veterans who suffer from Alzheimer's disease or other diseases causing dementia. Preference should be given to a site with access to an existing medical teaching or research facility.

(C) The scope and level of health care, residential care, and recreational facilities, and other services and amenities to be provided at each home.

(D) The number of sites to be established and the resident population to be served at each site, including a description of the type, size, and projected population of each of the residential components of the home, including, but not limited to, skilled nursing care beds, intermediate care beds, domiciliary care, independent living facilities, and day care facilities.

(E) Estimates of design and planning costs, land acquisition costs, capital construction costs, and annual operating costs of each home that would be associated with various modes of construction.

(F) Financing options for the development and construction of a home on one or more sites that shall include, but not be limited to, financial assistance available through the federal Department of Veterans Affairs State Home Grants Program.

(G) The management of each home by state or private administration.

(2) For the purposes of paragraph (1), the commission shall hear testimony from interested citizens concerning the needs of veterans in California.

(h) The commission shall report to the Governor and the Legislature on or before October 1, 2001, concerning its findings and recommendations, as specified in subdivision (g), for the development and construction activities associated with veterans homes in California.

(i) (1) Any new veterans homes sites recommended by the Governor's Commission on Veterans Homes shall be in addition to, and any new homes shall be built after, those listed in Section 1011.

(2) Priority for new veterans home sites shall be in areas that have been underserved, specifically in the San Joaquin Valley and the Los Angeles Basin.

(j) State agencies, including, but not limited to, the Governor's Office of Planning and Research, the Department of Veterans Affairs, the office of the Treasurer, and the Project Management Branch within the Real Estate Services Division of the Department of General Services, shall provide staff assistance to the commission upon its request.

(k) The commission may solicit and accept private donations, through the secretary, from any person, association, or entity interested in veterans benefits.

(*l*) 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. 2. Section 1.5 of this bill incorporates amendments to Section 1011.7 of the Military and Veterans Code proposed by this bill and AB 494. It shall only become operative if (1) both bills are enacted and

become effective on or before January 1, 2002, (2) each bill amends Section 1011.7 of the Military and Veterans Code, and (3) this bill is enacted after AB 494, in which case Section 1011.7 of the Military and Veterans Code, as amended by AB 494, 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.

CHAPTER 600

An act to amend, repeal, and add Sections 2331 and 2333 of, and to amend and repeal Section 2333.5 of, the Streets and Highways Code, relating to highways.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 2331 of the Streets and Highways Code, as amended by Section 1 of Chapter 663 of the Statutes of 1999, is amended to read:

2331. (a) The Highway Safety Act of 1973 (Title II of P.L. 93-87, 87 Stat. 250) has authorized appropriations for a number of programs relating to projects for the improvement of highway safety and the reduction of traffic congestion. These programs consist of the rail-highway crossings program (Section 203 of the Highway Safety Act of 1973), the pavement marking demonstration program (23 U.S.C. Sec. 151); projects for high-hazard locations, including, but not limited to, projects for bicycle and pedestrian safety and traffic calming measures in those locations (23 U.S.C. Sec. 152); program for the elimination of roadside obstacles (23 U.S.C. Sec. 153); and the federal-aid safer roads demonstration program (23 U.S.C. Sec. 405). The purpose of this chapter is to implement these programs in this state. The commission, the department, boards of supervisors, and city councils are authorized to do all things necessary in their respective jurisdictions to secure and expend federal funds in accordance with the intent of the federal act and of this chapter.

(b) 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. Section 2331 of the Streets and Highways Code, as added by Section 2 of Chapter 663 of the Statutes of 1999, is repealed.

SEC. 3. Section 2331 is added to the Streets and Highways Code, to read:

2331. (a) The Highway Safety Act of 1973 (Title II of P.L. 93-87, 87 Stat. 250) has authorized appropriations for a number of programs relating to projects for the improvement of highway safety and the reduction of traffic congestion. These programs consist of the rail-highway crossings program (Section 203 of the Highway Safety Act of 1973), the pavement marking demonstration program (23 U.S.C. Sec. 151), projects for high-hazard locations (23 U.S.C. Sec. 152); program for the elimination of roadside obstacles (23 U.S.C. Sec. 153); and the federal-aid safer roads demonstration program (23 U.S.C. Sec. 405). The purpose of this chapter is to implement these programs in this state. The commission, the department, boards of supervisors, and city councils are authorized to do all things necessary in their respective jurisdictions to secure and expend such federal funds in accordance with the intent of the federal act and of this chapter.

(b) This section shall become operative on January 1, 2005.

SEC. 4. Section 2333 of the Streets and Highways Code, as amended by Section 3 of Chapter 663 of the Statutes of 1999, is amended to read:

2333. (a) In each annual proposed budget prepared pursuant to Section 165, there shall be included an amount equal to the estimated apportionment available from the federal government for the programs described in Sections 2331 and 2333.5. The commission may allocate a portion of those funds each year for use on city streets and county roads. For projects authorized under Section 2333.5 and receiving funding under this section, the department may substitute State Highway Account funds in accordance with the department's policy for state funding in place at the time of the project fund allocation, if those federal funds are directed to projects on state highways that are eligible for funding under Section 152 of Title 23 of the United States Code. It is the intent of the Legislature that the commission allocate the total amount received from the federal government for all of the programs described in Sections 2331 and 2333.5 in a manner that, over a period of five years, makes not less than one million dollars ($1,000,000) of those funds available for use pursuant to Section 2333.5 and the remaining funds available for use in approximately equal amounts on state highways, local roads, and the program established under Section 2333.5. In addition, it is the intent of the Legislature that the commission shall apportion for use, in financing the railroad grade separation program described in Section 190, a substantial portion of the funds received pursuant to the federal rail-highway crossings program. Notwithstanding any other provision of law, the share of any railroad of the cost of maintaining railroad crossing protection facilities funded, in

whole or in part, by funds described in Section 2331 shall be the same share it would be if no federal funds were involved and the crossing protection facilities were funded pursuant to an order of the Public Utilities Commission pursuant to Section 1202 of the Public Utilities Code; and in case of dispute, the Public Utilities Commission shall determine that share pursuant to this section.

(b) 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. 5. Section 2333 of the Streets and Highways Code, as added by Section 4 of Chapter 663 of the Statutes of 1999, is repealed.

SEC. 6. Section 2333 is added to the Streets and Highways Code, to read:

2333. (a) In each annual proposed budget prepared pursuant to Section 165, there shall be included an amount equal to the estimated apportionment available from the federal government for the programs described in Section 2331. The commission may allocate a portion of such funds each year for use on city streets and county roads. It is the intent of the Legislature that the commission allocate the total amount received from the federal government for all of the programs described in Section 2331 in such a manner that, over a period of five years, such funds are made available for use in approximately equal amounts on state highways and on local roads. In addition, it is the intent of the Legislature that the commission shall apportion for use, in financing the railroad grade separation program described in Section 190, a substantial portion of the funds received pursuant to the federal rail-highway crossings program. Notwithstanding any other provision of law, the share of any railroad of the cost of maintaining railroad crossing protection facilities funded, in whole or in part, by funds described in Section 2331 shall be the same share it would be if no federal funds were involved and the crossing protection facilities were funded pursuant to an order of the Public Utilities Commission pursuant to Section 1202 of the Public Utilities Code, and in case of dispute, the Public Utilities Commission shall determine such share pursuant to this section.

(b) This section shall become operative on January 1, 2005.

SEC. 7. Section 2333.5 of the Streets and Highways Code is amended to read:

2333.5. (a) The department, in consultation with the Department of the California Highway Patrol, shall establish and administer a ''Safe Routes to School'' construction program pursuant to the authority granted under Section 152 of Title 23 of the United States Code and shall use federal transportation funds for construction of bicycle and pedestrian safety and traffic calming projects.

(b) The department shall make grants available to local governmental agencies under the program based on the results of a statewide competition that requires submission of proposals for funding and rates those proposals on all of the following factors:

(1) Demonstrated needs of the applicant.

(2) Potential of the proposal for reducing child injuries and fatalities.

(3) Potential of the proposal for encouraging increased walking and bicycling among students.

(4) Identification of safety hazards.

(5) Identification of current and potential walking and bicycling routes to school.

(6) Consultation and support for projects by school-based associations, local traffic engineers, local elected officials, law enforcement agencies, and school officials.

(c) With respect to the use of funds provided in subdivision (a), prior to the award of any construction grant or the department's use of those funds for a ''Safe Routes to School'' construction project encompassing a freeway, state highway or county road, the department shall consult with, and obtain approval from, the Department of the California Highway Patrol, ensuring that the ''Safe Routes to School'' proposal compliments the California Highway Patrol's Pedestrian Corridor Safety Program and is consistent with its statewide pedestrian safety statistical analysis.

(d) (1) The department shall study the effectiveness of the program established under this section with particular emphasis on the program's effectiveness in reducing traffic accidents and its contribution to improving safety and reducing the number of child injuries and fatalities in the vicinity of the project.

(2) The department shall submit a report to the Legislature on or before December 31, 2003, regarding the results of the study described in paragraph (1).

(3) On March 30, 2002, and each March 30th thereafter, the department shall submit an annual report to the Legislature listing and describing those projects funded under this section.

(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.

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CHAPTER 601

An act to amend Sections 1202 and 7604 of the Public Utilities Code, relating to railroad crossings, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 1202 of the Public Utilities Code is amended to read:

1202. The commission has the exclusive power:

(a) To determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or of a railroad by a street.

(b) To alter, relocate, or abolish by physical closing any crossing set forth in subdivision (a).

(c) To require, where in its judgment it would be practicable, a separation of grades at any crossing established and to prescribe the terms upon which the separation shall be made and the proportions in which the expense of the construction, alteration, relocation, or abolition of crossings or the separation of grades shall be divided between the railroad or street railroad corporations affected or between these corporations and the state, county, city, or other political subdivision affected.

(d) (1) To authorize on an application-by-application basis and supervise the operation of pilot projects to evaluate proposed crossing warning devices or new technology at designated crossings, with the consent of the local jurisdiction, the affected railroad, and other interested parties, including, but not limited to, represented railroad employees.

(2) (A) The Legislature finds and declares that for the communities of the state that are traversed by railroads, there is a growing need to mitigate train horn noise without compromising the safety of the public. Therefore, it is the intent of the Legislature that the commission may authorize pilot projects, after an application is filed and approved by the commission in at least the communities of Roseville, Fremont, Newark, and Lathrop to test the utility and safety of stationary, automated audible warning devices as an alternative to trains having to sound their horns as they approach highway-rail crossings.

(B) In light of the pending proposed ruling by the Federal Railroad Administration on the use of locomotive horns at all highway-rail crossings across the nation, it would be in the best interest of the state for the commission to expedite the pilot projects in order to contribute data to the federal rulemaking process regarding the possible inclusion of stationary, automated warning devices as a safety measure option to the proposed federal rule.

SEC. 1.5. Section 1202 of the Public Utilities Code is amended to read:

1202. The commission has the exclusive power:

(a) To determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or of a railroad by a street.

(b) To alter, relocate, or abolish by physical closing any crossing set forth in subdivision (a).

(c) To require, where in its judgment it would be practicable, a separation of grades at any crossing established and to prescribe the terms upon which the separation shall be made and the proportions in which the expense of the construction, alteration, relocation, or abolition of crossings or the separation of grades shall be divided between the railroad or street railroad corporations affected or between these corporations and the state, county, city, or other political subdivision affected.

(d) (1) To authorize on an application-by-application basis and supervise the operation of pilot projects to evaluate proposed crossing warning devices, new technology, or other additional safety measures at designated crossings, with the consent of the local jurisdiction, the affected railroad, and other interested parties, including, but not limited to, represented railroad employees.

(2) The Legislature finds and declares that for the communities of the state that are traversed by railroads, there is a growing need to mitigate train horn noise without compromising the safety of the public. Therefore, it is the intent of the Legislature that the commission may authorize the following pilot projects, after an application is filed and approved by the commission:

(A) To test the utility and safety of stationary, automated audible warning devices as an alternative to trains having to sound their horns as they approach highway-rail crossings in the communities of Roseville, Fremont, Newark, and Lathrop, and in any other location determined to be suitable by the commission.

(B) To authorize supplementary safety measures, as defined in Section 20153 (a)(3) of Title 49 of the United States Code, for use on rail crossings.

No new pilot project may be authorized after January 1, 2003. The commission shall report to the Legislature by March 31, 2004, on the outcome of this pilot project.

(3) In light of the pending proposed ruling by the Federal Railroad Administration on the use of locomotive horns at all highway-rail crossings across the nation, it would be in the best interest of the state for the commission to expedite the pilot projects authorized under paragraph (2) in order to contribute data to the federal rulemaking process regarding the possible inclusion of stationary, automated warning devices as a safety measure option to the proposed federal rule.

SEC. 2. Section 7604 of the Public Utilities Code is amended to read:

7604. (a) A bell, of at least 20 pounds weight or of equivalent sound-producing capability, shall be placed on each locomotive engine, and shall be rung at a distance of at least 1,320 feet from the place where the railroad crosses any street, road, or highway, and be kept ringing until it has crossed the street, road, or highway; or a steam whistle, air siren, or an air whistle shall be attached, and be sounded at the like distance, and be kept sounding at intervals until it has crossed the street, road, or highway, except as follows:

(1) In a city, the ringing of the bell or the sounding of the steam whistle, air siren, or air whistle shall be at the discretion of the operator of the locomotive engine.

(2) When a locomotive engine is engaged in a switching operation or comes to a stop at any point within a distance of 1,320 feet from the place at which the railroad crosses any street, road, or highway, it shall not be necessary that the bell be rung or the whistle, air siren, or air whistle be sounded, until the time and from the place that the locomotive begins an uninterrupted movement to and across the place at which the railroad crosses the street, road, or highway.

(3) (A) The ringing of the bell or the sounding of the steam whistle, air siren, or air whistle is not required when approaching a railroad crossing that has a permanently installed audible warning device authorized by the commission that begins to sound automatically no less than twenty seconds before an approaching train enters the place where the railroad crosses any street, road, or highway, and that keeps sounding until the lead locomotive has crossed the street, road, or highway.

(B) The operator of the locomotive may ring the bell or sound the steam whistle, air siren, or air whistle at crossings equipped as set forth in subparagraph (A).

(b) Any railroad corporation violating this section shall be subject to a penalty of one hundred dollars ($100) for every violation. The penalty may be recovered in an action prosecuted by the district attorney of the proper county, for the use of the state. The corporation is also liable for all damages sustained by any person, and caused by its locomotives, train, or cars, when the provisions of this section are not complied with.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 1202 of the Public Utilities Code proposed by both this bill and AB 1249. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, but this bill becomes operative first, (2) each bill amends Section 1202 of the Public Utilities Code, and (3) this bill is enacted after AB 1249, in which case Section 1202 of the Public Utilities Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 1249, at which time Section 1.5 of this bill shall become operative.

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

In order for the test of the pilot program for stationary, automated audible warning devices at highway-rail crossings and the feasibility of that system to be assessed, and for the program to be extended to additional locations, as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 602

An act to add Section 116365.5 to the Health and Safety Code, relating to drinking water.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 116365.5 is added to the Health and Safety Code, to read:

116365.5. (a) The Department of Health Services shall commence the process for adopting a primary drinking water standard for hexavalent chromium that complies with the criteria established under Section 116365.

(b) The department shall report to the Legislature on its progress in developing a primary drinking standard for hexavalent chromium by January 1, 2003.

(c) The department shall establish a primary drinking water standard for hexavalent chromium on or before January 1, 2004.

CHAPTER 603

An act to amend Section 14669.15 of, and to add Section 14669.16 to, the Government Code, relating to public works, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 14669.15 of the Government Code is amended to read:

14669.15. (a) (1) The Director of General Services may enter into one or more agreements to acquire, construct, purchase, lease, lease-purchase, lease-purchase finance, or lease with an option to purchase, with an initial option purchase price that exceeds two million dollars ($2,000,000), for the purpose of providing approximately 226,100 net usable square feet of office and related space and 136,000 net usable square feet of parking in a suburban location in the San Diego region.

(2) In connection with the selection and acquisition of a lease, lease-purchase, lease-purchase finance, or lease with an option to purchase , which shall be collectively referred to for purposes of this section as a ''lease'' or''leases,'' the department shall advertise and award the lease or leases in accordance with subdivision (b) of Section 14669 to the lowest responsible bidder offering to provide a building that meets the state's requirements.

(b) (1) The State Public Works Board may issue revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800)) to finance the acquisition of the facilities authorized in subdivision (a). The board may borrow funds for project costs from the Pooled Money Investment Account pursuant to Sections 16312 and 16313. In the event the bonds authorized for the projects are not sold, the Department of General Services shall adjust the Building Rental

Account of the Service Revolving Fund by an amount sufficient to repay any loans made by the Pooled Money Investment Account. It is the intent of the Legislature that this commitment be included in future Budget Acts until outstanding loans from the Pooled Money Investment Account are repaid either through the sale of bonds or from an appropriation.

(2) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold shall equal the cost of acquisition, including land, construction, furnishings and equipment, preliminary plans and working drawings, construction management and supervision, and other costs relating to the design and construction of the facilities, exercising any purchase option, and any additional sums necessary to pay interim and permanent financing costs and costs to issue these bonds. The additional amount may include interest and a reasonable required reserve fund.

(3) Authorized costs of the facilities, including land acquisition, preliminary plans, working drawings, and construction shall not exceed forty-five million dollars ($45,000,000) for the suburban facility.

(4) Notwithstanding Section 13332.11, the State Public Works Board may authorize the augmentation of the amount authorized pursuant to this subdivision by up to 10 percent of the amount specifically authorized.

(c) Notwithstanding Section 13340, funds derived from the interim and permanent financing or refinancing of the facilities specified in this section are hereby continuously appropriated without regard to fiscal years for these purposes.

(d) The net present value of the cost to acquire and operate the facilities authorized in subdivision (a) may not exceed the net present value of the cost to lease and operate an equivalent amount of office space, including the present facilities, over the same time period. The Department of General Services, in performing this analysis, shall obtain interest rates, discount rates, and the consumer price index figures from the Treasurer.

(e) The Director of General Services may sell, lease, or exchange, based on current market value and upon any terms and conditions, and with any reservations and exceptions, deemed by the director to be in the state's best interest, the existing state office and parking facilities located in the City of San Diego. The net proceeds, if any, from the sale, lease, or exchange shall be applied toward any obligations undertaken by the director in securing consolidated facilities as authorized by this section or by Section 14669.16.

(f) The director shall not enter into any agreement to acquire facilities, as specified in subdivision (a), any sooner than 45 days after notification, including the information specified in subdivision (d), to the

Chairperson of the Joint Legislative Budget Committee. It is the intent of the Legislature that the Joint Legislative Budget Committee hold a hearing on the pending agreement.

SEC. 2. Section 14669.16 is added to the Government Code, to read:

14669.16. (a) Notwithstanding any other provision of law, the Director of General Services may enter into a joint powers agreement with the City of San Diego in connection with the development of approximately 241,000 net usable square feet of new state-owned office space in the City of San Diego bounded by Ash, Union, ''A,'' State, and Front Streets. This development shall include, but not be limited to, the financing, planning, acquisition, construction, equipping, and furnishing of new state office buildings and associated child care and parking facilities, and any betterments, improvements, and facilities related to the development. The development shall comply with the state's regulations for sustainability and architectural excellence in public buildings.

(b) The Director of General Services may enter into an agreement for the appointment of a bond trustee, and other documents and agreements to finance, by sale of bonds or otherwise, this development. The Department of General Services may act as the agent for acquisition, planning, and construction matters. The agreement shall be with the joint powers authority created pursuant to the joint powers agreement.

(c) In connection with the development or any agreement for any work or expenses in connection with the development, the joint powers authority may use any funds lawfully available to it, and the Director of General Services may use and expend any funds pursuant to the agreement with the joint powers authority in order to complete the development.

(d) Inasmuch as it is in the best interest of the people of the state to consolidate state offices in the City of San Diego as well as other southern California locations at the earliest possible opportunity, a ''design-build'' concept may be utilized in meeting the objective of this section pursuant to Section 14661.

(e) (1) The joint powers authority created pursuant to this section may obtain interim financing for the project costs authorized by this section from any appropriate source including, but not limited to, a General Fund loan pursuant to Section 15849.1 and the Pooled Money Investment Account pursuant to Sections 16312 and 16313. If the bonds authorized by the project are not sold, the Department of General Services, as determined by the Department of Finance, shall commit a sufficient amount to repay any loans made for the project from available funds.

(2) It is the intent of the Legislature that this commitment shall be included in future Budget Acts until all outstanding loans from the

Pooled Money Investment Account are repaid either through the proceeds from the sale of bonds or from an appropriation in the annual Budget Act.

(3) Notwithstanding Section 13340, funds derived from the interim and permanent financing or refinancing of the facilities specified in this section are hereby continuously appropriated to the joint powers authority for these purposes without regard to fiscal years.

(f) Authorized costs of the facilities, including land acquisition, preliminary plans, working drawings, and construction shall not exceed eighty-one million dollars ($81,000,000).

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

In order to facilitate the development of new state-owned office space in the City of San Diego, it is necessary that this bill take effect immediately.

CHAPTER 604

An act to add Section 116361 to the Health and Safety Code, relating to drinking water.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

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

(a) The current federal maximum contaminant level (MCL) for arsenic in drinking water, 50 parts per billion (ppb), was established by the United States Public Health Service in 1942, before arsenic was known to cause cancer. California also has adopted a 50 ppb MCL for arsenic in drinking water.

(b) In 1999, after eight years of study, a National Academy of Sciences panel unanimously concluded that the current arsenic drinking water standard does not protect public health and should be lowered as ''promptly as possible.'' The panel also found sufficient evidence from epidemiological studies that chronic ingestion of arsenic causes lung, bladder, and skin cancer. According to the academy, the lifetime risk of dying of cancer from arsenic in tap water at the current allowable level of 50 ppb is one in 100, up to 10,000 times higher than the generally accepted excess cancer rate.

(c) A recent study conducted for the Association of California Water Agencies found the average concentration of arsenic in California groundwater to be 9.8 ppb. Based on findings of the National Academy of Sciences, a 9.8 ppb concentration of arsenic in drinking water would result in an excess cancer risk of approximately one in 500, far exceeding acceptable public health levels.

(d) The United States Environmental Protection Agency (USEPA) has determined that cost-effective treatment strategies are available to remove at least 80 percent of arsenic from drinking water, and that for water systems that serve more than 10,000 people, the annual household cost of treatment will be from eighty-six cents ($0.86) to thirty-two dollars ($32).

(e) Notwithstanding the serious and unacceptable health threat posed by the current MCL for arsenic in drinking water and the availability of cost-effective treatment technologies, the USEPA suspended adoption of its proposed 10 ppb standard for arsenic in drinking water, and violated the June 22, 2001, statutory deadline for adoption of a new standard.

(f) To reestablish a reasonable assurance that Californians will be protected from excessive risk of cancer resulting from ingestion of arsenic in drinking water, it is necessary for the state to adopt an MCL for arsenic that protects public health and to ensure that water consumers are notified when levels of arsenic in drinking water exceed the public health goal established by the state.

SEC. 2. Section 116361 is added to the Health and Safety Code, to read:

116361. (a) The Office of Environmental Health Hazard Assessment shall place a priority on the development of a public health goal for arsenic in drinking water, pursuant to subdivision (c) of Section 116365, sufficient to allow it to adopt the goal no later than December 31, 2002.

(b) Commencing January 1, 2002, the department shall commence the process for revising the existing primary drinking water standard for arsenic, and shall adopt a revised standard for arsenic not later than June 30, 2004. In considering the technological and economic feasibility of compliance with the proposed standard pursuant to paragraph (3) of subdivision (b) of Section 116365, the department shall consider emerging technologies that may cost-effectively reduce exposure to arsenic in drinking water.

(c) On or before December 31, 2002, the Secretary for Environmental Protection shall develop language regarding the health effects associated with the ingestion of arsenic in drinking water for inclusion in consumer confidence reports pursuant to Section 116470. On and after July 1, 2003, this language shall be included in the consumer confidence reports

mailed or delivered to customers by each water system that measures arsenic in finished water at levels that exceed the applicable public health goal.

(d) The language developed by the Secretary for Environmental Protection for use in consumer confidence reports to describe the health effects associated with the ingestion of arsenic in drinking water shall be developed in accordance with primacy requirements described in subdivision (e) of Section 141.151 and subsections (b), (c), and (d) of Section 142.12 of Title 40 of the Code of Federal Regulations.

(e) Nothing in this section affects or changes the date for implementation of a revised arsenic standard by public water systems as required in Parts 9, 141, and 142 of Title 40 of the Code of Federal Regulations.

CHAPTER 605

An act to amend Sections 25112.5, 25116.5, 25143.12, 25150.6, 25159, 25159.5, 25159.6, 25159.7, 25159.8, 25159.9, 25163.3, 25201.6, and 25250.11 of, to add Sections 25200.4 and 25250.28 to, and to repeal Section 25169.1 of, the Health and Safety Code, relating to hazardous waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 25112.5 of the Health and Safety Code is amended to read:

25112.5. (a) ''Disclosure statement'' means a statement submitted to the department by an applicant, signed by the applicant under penalty of perjury, which includes all of the following information:

(1) The full name, business address, social security number, and driver's license number of all of the following:

(A) The applicant.

(B) Any officers, directors, or partners, if the applicant is a business concern.

(C) All persons or any officers, partners, or any directors if there are no officers, of business concerns holding more than 5 percent of the equity in, or debt liability of the applicant, except that if the debt liability is held by a lending institution, the applicant shall only supply the name and address of the lending institution.

(2) Except as provided in subdivision (b), the following persons listed on the disclosure statement shall submit properly completed fingerprint cards:

(A) The sole proprietor.

(B) The partners.

(C) Other persons listed in subparagraph (C) of paragraph (1) and any officers or directors of the applicant company as required by the department.

(3) Fingerprint cards submitted for any person required by paragraph (2) shall only be submitted once. Fingerprint cards shall be completed and submitted for any additional person only if there is a change in the person serving in a position for which fingerprint cards are required to be submitted pursuant to paragraph (2). The department shall use the information required by paragraph (2) to positively identify the applicant.

(4) The full name and business address of any business concern that generates, transports, treats, stores, recycles, disposes of, or handles hazardous waste and hazardous materials in which the applicant holds at least a 5 percent debt liability or equity interest.

(5) A description of any local, state, or federal licenses, permits, or registrations for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials applied for, or possessed by the applicant, or by the applicant under any previous name or names, in the five years preceding the filing of the statement, or, if the applicant is a business concern, by the officers, directors, or partners of the business concern, including the name and address of the issuing agency.

(6) A listing and explanation of any final orders or license revocations or suspensions issued or initiated by any local, state, or federal authority, in the five years immediately preceding the filing of the statement, or any civil or criminal prosecutions filed in the five years immediately preceding, or pending at the time of, the filing of the statement, with any remedial actions or resolutions if applicable, relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials by the applicant, or by the applicant under any previous name or names, or, if the applicant is a business concern, by any officer, director, or partner of the business concern.

(7) A listing of any agencies outside of the state that regulate, or had regulated, the applicant's, or the applicant's under any previous name or names, generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials in the five years preceding the filing of the disclosure statement.

(8) A listing and explanation of any federal or state conviction, judgment, or settlement, in the five years immediately preceding the filing of the statement, with any remedial actions or resolutions if applicable, relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials by the applicant, or by the applicant under any previous name or names, or if the applicant is a business concern, by any officer, director, or partner of the business concern.

(9) A listing of all owners, officers, directors, trustees, and partners of the applicant who have owned, or been an officer, director, trustee, or partner of, any company that generated, transported, treated, stored, recycled, disposed of, or handled hazardous wastes or hazardous materials and which was the subject of any of the actions described in paragraphs (6) and (8) for the five years preceding the filing of the statement.

(b) Notwithstanding paragraph (2) of subdivision (a), a corporation, the stock of which is listed on a national securities exchange and registered under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or a subsidiary of such a corporation, is not subject to the fingerprint card requirements of subdivision (a).

(c) In lieu of the statement specified in subdivision (a), a corporation, the stock of which is listed on a national securities exchange or on the National Market System of the NASDAQ Stock Market and registered under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or a subsidiary of that corporation, may submit to the department copies of all periodic reports, including, but not limited to, those reports required by Section 78m of Title 15 of the United States Code and Part 229 (commencing with Section 229.10) of Chapter II of Title 17 of the Code of Federal Regulations that the corporation or subsidiary has filed with the Securities and Exchange Commission in the three years immediately preceding the submittal, if the corporation or subsidiary thereof has held a hazardous waste facility permit or operated a hazardous waste facility under interim status pursuant to Section 25200 or 25200.5 since January 1, 1984.

SEC. 2. Section 25116.5 of the Health and Safety Code is amended to read:

25116.5. (a) ''Intermediate manufacturing process stream'' means a material, or combination of materials, that meets all of the following conditions:

(1) It is produced as part of the manufacturing process.

(2) It is used onsite on a batch or continuous basis, in either the same or in a different manufacturing process to produce a commercial product.

(3) It is not a recyclable material.

(4) The person who produced the material or combination of materials is able to demonstrate all of the following:

(A) The material, or combination of materials, is used, alone or in combination with other materials, in a manufacturing process that is designed for its use.

(B) The material, or combination of materials, is not accumulated or stored in amounts greater than can be used in the manufacturing process.

(C) The material, or combination of materials, is not handled, stored, or processed in a manner that is inconsistent with its intended use or the operating requirements of the manufacturing process.

(D) The material, or combination of materials, is not burned or incinerated for the purpose of abandoning or relinquishing the material or combination of materials, except as may otherwise be allowed under both this chapter and the federal act.

(b) Notwithstanding subdivision (a), a material is not an intermediate manufacturing process stream if it has been released in violation of this chapter, or any other applicable law, or an order issued pursuant to this chapter or other applicable law, unless it has been released into an appropriate containment area or structure and has been promptly recovered and returned to the manufacturing process, without prior treatment, for use in the originally intended manufacturing process.

SEC. 3. Section 25143.12 of the Health and Safety Code is amended to read:

25143.12. Notwithstanding any other provision of law, debris that is contaminated only with crude oil or any of its fractions is exempt from regulation under this chapter if all of the following conditions are met:

(a) The debris consists exclusively of wood, paper, textile materials, concrete rubble, metallic objects, or other solid manufactured objects.

(b) The debris is not subject to regulation as a hazardous waste or used oil under federal law.

(c) The debris does not contain any free liquids, as determined by the paint filter test specified in the regulations adopted by the department.

(d) The debris, if not contaminated with crude oil or any of its fractions, would not be regulated as a hazardous waste under this chapter or the regulations adopted pursuant to this chapter.

(e) The debris is not a container or tank that is subject to regulation as hazardous waste under this chapter or the regulations adopted pursuant to this chapter.

(f) The debris is disposed of in a composite lined portion of a waste management unit that is classified as either a Class I or Class II waste management unit in accordance with Article 3 (commencing with Section 2530) of Chapter 15 of Division 3 of Title 23 of the California Code of Regulations, the disposal is made in accordance with the applicable requirements of the California regional water quality control

board and the California Integrated Waste Management Board, and, if the waste management unit is a Class II landfill, it is sited, designed, constructed, and operated in accordance with the minimum standards applicable on or after October 9, 1993, to new or expanded municipal solid waste landfills, that are contained in Part 258 (commencing with Section 258.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations read on January 1, 1996.

SEC. 4. Section 25150.6 of the Health and Safety Code is amended to read:

25150.6. (a) Except as provided in subdivisions (e) and (f), the department, by regulation, may exempt a hazardous waste management activity from one or more of the requirements of this chapter, if the department does all of the following:

(1) Prepares an analysis of the hazardous waste management activity to which the exemption will apply pursuant to subdivision (b). The department shall first prepare the analysis as a preliminary analysis and make it available to the public at the same time that the department gives notice, pursuant to Section 11346.4 of the Government Code, that it proposes to adopt a regulation exempting the hazardous waste management activity from one or more of the requirements of this chapter. The department shall include, in the notice, a reference that the department has prepared a preliminary analysis and a statement concerning where a copy of the preliminary analysis can be obtained. The information in the preliminary analysis shall be updated and the department shall make the analysis available to the public as a final analysis not less than 10 working days prior to the date that the regulation is adopted.

(2) Demonstrates that one of the conclusions required by subdivision (c) is valid.

(3) Imposes, as may be necessary, conditions and limitations on the exemption that ensure that the exempted activity will not pose a significant potential hazard to human health or safety or to the environment.

(b) Before the department gives notice of a proposal to adopt a regulation exempting a hazardous waste activity from one or more of the requirements of this chapter pursuant to subdivision (a), and before the department adopts the regulation, the department shall evaluate the hazardous waste management activity and prepare, as required by paragraph (1) of subdivision (a), an analysis that addresses all of the following aspects of the activity, to the extent that the requirement or requirements from which the activity will be exempted can affect these aspects of the activity:

(1) The types of hazardous waste streams and the estimated amounts of hazardous waste that are managed as part of the activity and the

hazards to human health or safety or to the environment posed by reasonably foreseeable mismanagement of those hazardous wastes and their hazardous constituents. The estimate of the amounts of hazardous waste that are managed as part of the activity shall be based upon information reasonably available to the department.

(2) The complexity of the activity, and the amount and complexity of operator training, equipment installation and maintenance, and monitoring that are required to ensure that the activity is conducted in a manner that safely and effectively manages the particular hazardous waste stream.

(3) The chemical or physical hazards that are associated with the activity and the degree to which those hazards are similar to, or differ from, the chemical or physical hazards that are associated with the production processes that are carried out in the facilities that produce the hazardous waste that is managed as part of the activity.

(4) The types of accidents that might reasonably be foreseen to occur during the management of particular types of hazardous waste streams as part of the activity, the likely consequences of those accidents, and the actual reasonably available accident history associated with the activity.

(5) The types of locations at which the activity may be carried out, an estimate of the number of these locations, and the types of hazards that may be posed by proximity to the land uses described in subdivision (b) of Section 25232. The estimate of the number of locations at which the activity may be carried out shall be based upon information reasonably available to the department.

(c) The department shall not give notice proposing the adoption of, and the department may not adopt, a regulation pursuant to subdivision (a) unless it first demonstrates, using the information developed in the analysis prepared pursuant to subdivision (b), that one of the following is valid:

(1) The requirement from which the activity is exempted is not significant or important in either of the following:

(A) Preventing or mitigating potential hazards to human health or safety or to the environment posed by the activity.

(B) Ensuring that the activity is conducted in compliance with other applicable requirements of this chapter and the regulations adopted pursuant to this chapter.

(2) A requirement is imposed and enforced by another public agency that provides protection of human health and safety and the environment that is as effective as, and equivalent to, the protection provided by the requirement, or requirements, from which the activity is being exempted.

(3) Conditions or limitations imposed on the exemption will provide protection of human health and safety and the environment equivalent

to the requirement, or requirements, from which the activity is exempted.

(4) Conditions or limitations imposed on the exemption accomplish the same regulatory purpose as the requirement, or requirements, from which the activity is being exempted but at less cost or greater administrative convenience and without increasing potential risks to human health or safety or to the environment.

(d) A regulation adopted pursuant to this section shall not be deemed to meet the standard of necessity, pursuant to Section 11349.1 of the Government Code, unless the department has complied with subdivisions (b) and (c).

(e) The department shall not exempt a hazardous waste management activity from a requirement of this chapter or the regulations adopted by the department if the requirement is also a requirement for that activity under the federal act.

(f) (1) On and after January 1, 2002, the department may, by regulation, exempt a hazardous waste management activity from one or more of the requirements of this chapter pursuant to this section only if the regulations govern the management of one of the hazardous wastes listed in subparagraphs (A) to (E), inclusive, of paragraph (2), the regulations identify the hazardous waste as a universal waste, and the regulations amend the standards for universal waste management set forth in Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(2) The regulations that the department may adopt pursuant to paragraph (1) shall govern only the following types of hazardous waste:

(A) Electronic hazardous wastes, as the department may describe in the regulations adopted pursuant to this subdivision.

(B) Hazardous waste batteries.

(C) Hazardous wastes containing mercury.

(D) Hazardous waste lamps.

(E) Lead-painted wood debris that is a hazardous waste.

(g) The authority of the department to adopt regulations pursuant to this section shall remain in effect only until January 1, 2003, unless a later enacted statute, which is enacted before January 1, 2003, deletes or extends that date. This subdivision does not invalidate any regulation adopted pursuant to this section prior to the expiration of the department's authority.

SEC. 5. Section 25159 of the Health and Safety Code is amended to read:

25159. The department shall adopt and revise when necessary regulations that will allow the state to receive and maintain authorization to administer a state hazardous waste program in lieu of the federal program pursuant to Section 6926 of the federal act. When reviewing a

regulation adopted pursuant to this section, the Office of Administrative Law shall not review the regulation for nonduplication, notwithstanding paragraph (6) of subdivision (a) of Section 11349.1 of the Government Code.

SEC. 6. Section 25159.5 of the Health and Safety Code is amended to read:

25159.5. (a) In adopting or revising standards and regulations pursuant to this chapter, the department shall, insofar as practicable, make the standards and regulations conform with corresponding regulations adopted by the Environmental Protection Agency pursuant to the federal act. This section does not prohibit the department from adopting standards and regulations that are more stringent or more extensive than federal regulations.

(b) Until the state program is granted final authorization by the Environmental Protection Agency pursuant to Section 6926 of Title 42 of the United States Code, all regulations adopted pursuant to the federal act shall be deemed to be the regulations of the department, except that any state statute or regulation which is more stringent or more extensive than a federal regulation shall supersede the federal regulation.

SEC. 7. Section 25159.6 of the Health and Safety Code is amended to read:

25159.6. Until the department adopts standards and regulations corresponding to, and equivalent to, or more stringent or extensive than, regulations adopted by the Environmental Protection Agency pursuant to Sections 6922 to 6926, inclusive, of Title 42 of the United States Code, the following shall apply:

(a) Any person who produces a waste that is a hazardous waste as defined by Section 25117 shall comply with this chapter and regulations adopted pursuant to this chapter and, in addition, to the extent that the waste is both hazardous, as defined by regulations adopted pursuant to Section 6921 of Title 42 of the United States Code, and has not been excluded from regulation pursuant to that section, the person shall also comply with federal regulations adopted pursuant to Section 6922 of Title 42 of the United States Code.

(b) Any person who transports a waste that is a hazardous waste shall comply with this chapter and regulations adopted pursuant to this chapter and, in addition, to the extent that the waste is both hazardous, as defined by regulations adopted pursuant to Section 6921 of Title 42 of the United States Code, and has not been excluded from regulation pursuant to that section, the person shall also comply with federal regulations adopted pursuant to Section 6923 of Title 42 of the United States Code.

(c) Any person who owns or operates a hazardous waste facility shall comply with this chapter and regulations adopted pursuant to this

chapter and, in addition, to the extent that the facility is defined as a hazardous waste facility in regulations adopted under the federal act, and to the extent that the waste is both hazardous, as defined by regulations adopted pursuant to Section 6921 of Title 42 of the United States Code, and has not been excluded from regulation pursuant to that section, that person shall also comply with federal regulations adopted pursuant to Sections 6924 and 6925 of Title 42 of the United States Code.

SEC. 8. Section 25159.7 of the Health and Safety Code is amended to read:

25159.7. The department is authorized to carry out all hazardous waste management responsibilities imposed or authorized by the federal act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), including any subsequent amendments of these federal acts, and any regulations adopted pursuant to these federal acts.

SEC. 9. Section 25159.8 of the Health and Safety Code is amended to read:

25159.8. Nothing in this chapter shall be construed as prohibiting the furnishing of trade secret information to the Environmental Protection Agency to the extent required by law to obtain and maintain interim and final authorization to implement the state hazardous waste program in lieu of the federal program under the federal act. If the department has received a written claim that particular information furnished to the Environmental Protection Agency is trade secret information, the department shall so inform the Environmental Protection Agency.

SEC. 10. Section 25159.9 of the Health and Safety Code is amended to read:

25159.9. Notwithstanding any other provision of law, the department may make available to the Environmental Protection Agency, or any other federal agency, any and all information necessary to be furnished to these agencies in order to comply with the federal act in order to obtain and maintain authorization to administer the state hazardous waste program in lieu of the federal program. The sharing of information between the department and a federal agency pursuant to this section shall not constitute a waiver by the department or any affected person of any privilege or confidentiality of the information provided by law.

SEC. 11. Section 25163.3 of the Health and Safety Code is amended to read:

25163.3. A person who initially collects hazardous waste at a remote site and transports that hazardous waste to a consolidation site operated by the generator and who complies with the notification requirements of subdivision (d) of Section 25110.10 shall be exempt

from the manifest and transporter registration requirements of Sections 25160 and 25163 with regard to the hazardous waste if all of the following conditions are met:

(a) The hazardous waste is a non-RCRA hazardous waste, or the hazardous waste or its transportation is otherwise exempt from, or is not otherwise regulated pursuant to, the federal act.

(b) The conditions and requirements of Section 25121.3 are met.

(c) The regulations adopted by the department pertaining to personnel training requirements for generators are complied with for all personnel handling the hazardous waste during transportation from the remote site to the consolidation site.

(d) The hazardous waste is transported by employees of the generator or by trained contractors under the control of the generator, in vehicles which are under the control of the generator, or by registered hazardous waste transporters. The generator shall assume liability for a spill of hazardous waste being transported under this section by the generator, or a contractor in a vehicle under the control of the generator or contractor. Nothing in this subdivision bars any agreement to insure, hold harmless, or indemnify a party to the agreement for any liability under this section or otherwise bars any cause of action a generator would otherwise have against any other party.

(e) The hazardous waste is not held at any interim location, other than another remote site operated by the same generator, for more than eight hours, unless that holding is required by other provisions of law.

(f) Not more than 275 gallons or 2,500 pounds, whichever is greater, of hazardous waste is transported in any single shipment, except that a generator who is a public utility, local publicly owned utility, or municipal utility district may transport up to 1,600 gallons of hazardous wastewater from the dewatering of one or more utility vaults, or up to 500 gallons of any other liquid hazardous waste in a single shipment.

(g) A shipping paper containing all of the following information accompanies the hazardous waste while in transport, except as provided in subdivision (h).

(1) A list of the hazardous wastes being transported.

(2) The type and number of containers being used to transport each type of hazardous waste.

(3) The quantity, by weight or volume, of each type of hazardous waste being transported.

(4) The physical state, such as solid, powder, liquid, semi-liquid, or gas, of each type of hazardous waste being transported.

(5) The location of the remote site where the hazardous waste is initially collected.

(6) The location of any interim site where the hazardous waste is held en route to the consolidation site.

(7) The name, address, and telephone number of the generator, and, if different, the address and telephone number of the consolidation site to which the hazardous waste is being transported.

(8) The name and telephone number of an emergency response contact, for use in the event of a spill or other release.

(9) The name of the individual or individuals who transport the hazardous waste from the remote site to the consolidation site.

(10) The date that the generator first begins to actively manage the hazardous waste at the remote site, the date that the shipment leaves the remote site where the hazardous waste is initially collected, and the date that the shipment arrives at the consolidation site.

(h) A shipping paper is not required if the total quantity of the shipment does not exceed 10 pounds of hazardous waste, except that a shipping paper is required to transport any quantity of extremely or acutely hazardous waste.

(i) All shipments conform with all applicable requirements of the United States Department of Transportation for hazardous materials shipments.

SEC. 12. Section 25169.1 of the Health and Safety Code is repealed.

SEC. 13. Section 25200.4 is added to the Health and Safety Code, to read:

25200.4. (a) Any application for a hazardous waste facilities permit or other grant of authorization to use and operate a hazardous waste facility made pursuant to this article, except for an application made by a federal, state, or local agency, shall include a disclosure statement, as defined in Section 25112.5.

(b) The requirements of this section do not apply to a person operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption.

(c) Notwithstanding subdivision (a), an applicant for a series C standardized permit, as specified in Section 25201.6, shall submit a disclosure statement to the department only upon request.

SEC. 14. Section 25201.6 of the Health and Safety Code is amended to read:

25201.6. (a) For purposes of this section and Section 25205.2, the following terms have the following meaning:

(1) ''Series A standardized permit'' means a permit issued to a facility that meets one or more of the following conditions:

(A) The total influent volume of liquid hazardous waste treated is greater than 50,000 gallons per calendar month.

(B) The total volume of solid hazardous waste treated is greater than 100,000 pounds per calendar month.

(C) The total facility storage design capacity is greater than 500,000 gallons for liquid hazardous waste.

(D) The total facility storage design capacity is greater than 500 tons for solid hazardous waste.

(E) A volume of liquid or solid hazardous waste is stored at the facility for more than one calendar year.

(2) ''Series B standardized permit'' means a permit issued to a facility that does not store liquid or solid hazardous waste for a period of more than one calendar year, that does not exceed any of the upper volume limits specified in subparagraphs (A) to (D), inclusive, and that meets one or more of the following conditions:

(A) The total influent volume of liquid hazardous waste treated is greater than 5,000 gallons, but does not exceed 50,000 gallons, per calendar month.

(B) The total volume of solid hazardous waste treated is greater than 10,000 pounds, but does not exceed 100,000 pounds, per calendar month.

(C) The total facility storage design capacity is greater than 50,000 gallons, but does not exceed 500,000 gallons, for liquid hazardous waste.

(D) The total facility storage design capacity is greater than 100,000 pounds, but does not exceed 500 tons, for solid hazardous waste.

(3) ''Series C standardized permit'' means a permit issued to a facility that does not store liquid or solid hazardous waste for a period of more than one calendar year, that does not conduct thermal treatment of hazardous waste, with the exception of evaporation, and that either meets the requirements of paragraph (3) of subdivision (g) or meets all of the following conditions:

(A) The total influent volume of liquid hazardous waste treated does not exceed 5,000 gallons per calendar month.

(B) The total volume of solid hazardous waste treated does not exceed 10,000 pounds per calendar month.

(C) The total facility storage design capacity does not exceed 50,000 gallons for liquid hazardous waste.

(D) The total facility storage design capacity does not exceed 100,000 pounds for solid hazardous waste.

(b) The department shall adopt regulations specifying standardized hazardous waste facilities permit application forms that may be completed by a non-RCRA Series A, B, or C treatment, storage, or treatment and storage facility, in lieu of other hazardous waste facilities permit application procedures set forth in regulations. The department shall not issue permits under this section to specific classes of facilities unless the department finds that doing so will not create a competitive disadvantage to a member or members of that class that were in compliance with the permitting requirements which were in effect on September 1, 1992.

(c) The regulations adopted pursuant to subdivision (b) shall include all of the following:

(1) Require that the standardized permit notification be submitted to the department on or before October 1, 1993, for facilities existing on or before September 1, 1992, except for facilities specified in paragraphs (2) and (3) of subdivision (g). The standardized permit notification shall include, at a minimum, the information required for a Part A application as described in the regulations adopted by the department.

(2) Require that the standardized permit application be submitted to the department within six months of the submittal of the standardized permit notification. The standardized permit application shall require, at a minimum, that the following information be submitted to the department for review prior to the final permit determination:

(A) A description of the treatment and storage activities to be covered by the permit, including the type and volumes of waste, the treatment process, equipment description, and design capacity.

(B) A copy of the closure plan as required by paragraph (13) of subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations.

(C) A description of the corrective action program, as required by Section 25200.10.

(D) Financial responsibility documents specified in paragraph (17) of subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations.

(E) A copy of the topographical map as specified in paragraph (18) of subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations.

(F) A description of the individual container, and tank and containment system, and of the engineer's certification, as specified in Sections 66270.15 and 66270.16 of Title 22 of the California Code of Regulations.

(G) Documentation of compliance, if applicable, with the requirements of Article 8.7 (commencing with Section 25199).

(3) Require that a facility operating pursuant to a standardized permit comply with the liability assurance requirements in Section 25200.1.

(4) Specify which of the remaining elements of the permit application, as described in subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations, shall be the subject of a certification of compliance by the applicant.

(5) Establish a procedure for imposing an administrative penalty pursuant to Section 25187, in addition to any other penalties provided by this chapter, upon an owner or operator of a treatment or storage facility that is required to obtain a hazardous waste facilities permit and that meets the criteria for a Series A, B, or C permit listed in subdivision

(a), who does not submit a standardized permit notification to the department on or before the submittal deadline specified in paragraph (1) or the submittal deadline specified in paragraph (2) or (3) of subdivision (g), whichever date is applicable, and who continues to operate the facility without obtaining a hazardous waste facilities permit or other grant of authorization from the department after the applicable deadline for submitting the notification to the department. In determining the amount of the administrative penalty to be assessed, the regulations shall require the amount to be based upon the economic benefit gained by that owner or operator as a result of failing to comply with this section.

(6) Require that a facility operating pursuant to a standardized permit comply, at a minimum, with the interim status facility operating requirements specified in the regulations adopted by the department, except that the regulations adopted pursuant to this section may specify financial assurance amounts necessary to adequately respond to damage claims at levels that are less than those required for interim status facilities if the department determines that lower financial assurance levels are appropriate.

(d) (1) Any regulations adopted pursuant to this section may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) On and before January 1, 1995, the adoption of the regulations pursuant to paragraph (1) is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(e) The department may not grant a permit under this section unless the department has determined the adequacy of the material submitted with the application and has conducted an inspection of the facility and determined all of the following:

(1) The treatment process is an effective method of treating the waste, as described in the permit application.

(2) The corrective action plan is appropriate for the facility.

(3) The financial assurance is sufficient for the facility.

(f) (1) Interim status shall not be granted to a facility that does not submit a standardized permit notification on or before October 1, 1993, unless the facility is subject to paragraph (2) or (3) of subdivision (g).

(2) Interim status shall be revoked if the permit application is not submitted within six months of the permit notification.

(3) Interim status granted to any facility pursuant to this section and Sections 25200.5 and 25200.9 shall terminate upon a final permit determination or January 1, 1998, whichever date is earlier. This paragraph shall apply retroactively to facilities for which a final permit determination is made on or after September 30, 1995.

(4) A treatment, storage, or treatment and storage facility operating pursuant to interim status that applies for a permit pursuant to this section shall pay fees to the department in an amount equal to the fees established by subdivision (e) of Section 25205.4 for the same size and type of facility.

(g) (1) Except as provided in paragraphs (2), (3), and (4), a facility treating used oil or solvents, or that engages in incineration, thermal destruction, or any land disposal activity, is not eligible for a standardized permit pursuant to this section.

(2) (A) Notwithstanding paragraph (1), an offsite facility treating solvents is eligible for a standardized permit pursuant to this section if all of the following conditions are met:

(i) The facility exclusively treats solvent wastes, and is not required to obtain a permit pursuant to the federal act.

(ii) The solvent wastes that the facility treats are only the types of solvents generated from dry cleaning operations.

(iii) Ninety percent or more of the solvents that the facility receives are from dry cleaning operations.

(iv) Ninety percent or more of the solvents that the facility receives are recycled and sold by the facility, excluding recycling for energy recovery, provided that the facility does not produce more than 15,000 gallons per month of recycled solvents.

(B) A facility that is eligible for a standardized permit pursuant to this paragraph is also eligible for the fee exemption provided in subdivision (d) of Section 25205.12 for any year or reporting period prior to January 1, 1995, if the owner or operator complies with the notification and application requirements of this section on or before March 1, 1995.

(C) A facility treating solvents pursuant to this paragraph shall clearly label all recycled solvents as recycled prior to subsequent sale or distribution.

(D) Notwithstanding that a facility eligible for a standardized permit pursuant to this paragraph meets the eligibility requirements for a Series C standardized permit specified in paragraph (3) of subdivision (a), the facility shall obtain and meet the requirements for a Series B standardized permit specified in paragraph (2) of subdivision (a).

(E) Notwithstanding any other provision of this chapter, for purposes of this paragraph, if the recycled material is to be used for dry cleaning, ''recycled'' means the removal of water and inhibitors from waste solvent and the production of dry cleaning solvent with an appropriate inhibitor for dry cleaning use. The removal of inhibitors is not required if all of the solvents received by the facility that are recycled for dry cleaning use are from dry cleaners.

(3) (A) Notwithstanding paragraph (1), an owner or operator with a surface impoundment used only to contain non-RCRA wastes generated

onsite, that holds those wastes for not more than one 30-day period in any calendar year, and that meets the criteria specified in paragraphs (i) to (iii), inclusive, may submit a Series C standardized permit application to the department. A surface impoundment is eligible for operation under the Series C standardized permit tier if all of the following requirements are met:

(i) The waste and any residual materials are removed from the surface impoundment within 30 days of the date the waste was first placed into the surface impoundment.

(ii) The owner or operator has, and is in compliance with, current waste discharge requirements issued by the appropriate California regional water quality control board for the surface impoundment.

(iii) The owner or operator complies with all applicable groundwater monitoring requirements of the regulations adopted by the department pursuant to this chapter.

(B) A facility that is eligible for a standardized permit pursuant to this paragraph is also eligible for the fee exemption provided in subdivision (d) of Section 25205.12 for any year or reporting period prior to January 1, 1996, if the owner or operator complies with the notification and application requirements of this section on or before March 1, 1996.

(4) For purposes of this subdivision, treating solvents and thermal destruction do not include the destruction of nonmetal constituents in a thermal treatment unit that is operated solely for the purpose of the recovery of precious metals, if that unit is operating pursuant to a standardized permit issued by the department and the unit is in compliance with the applicable requirements of Division 26 (commencing with Section 39000). This paragraph does not prohibit the department from specifying, in the standardized permit for such a unit, a maximum concentration of nonmetal constituents, if the department determines that this requirement is necessary for protection of human health or safety or the environment.

(h) Facilities operating pursuant to this section shall comply with Article 4 (commencing with Section 66270.40) of Chapter 20 of Division 4.5 of Title 22 of the California Code of Regulations.

(i) (1) The department shall require an owner or operator applying for a standardized permit to complete and file a phase I environmental assessment with the application. However, if a RCRA facility assessment has been performed by the department, the assessment shall be deemed to satisfy the requirement of this subdivision to complete and file a phase I environmental assessment, and the facility shall not be required to submit a phase I environmental assessment with its application.

(2) (A) For purposes of this subdivision, the phase I environmental assessment shall include a preliminary site assessment, as described in

subdivision (a) of Section 25200.14, except that the phase I environmental assessment shall also include a certification, signed, except as provided in subparagraph (B), by the owner, and also by the operator if the operator is not the owner, of the facility and an independent professional engineer, geologist, or environmental assessor registered in the state.

(B) Notwithstanding subparagraph (A), the certification for a permanent household waste collection facility may be signed by any professional engineer, geologist, or environmental assessor registered in the state, including, but not limited to, such a person employed by the governmental entity, but if the facility owner is not a governmental entity, the engineer, geologist, or assessor signing the certification shall not be employed by, or be an agent of, the facility owner.

(3) The certification specified in paragraph (2) shall state whether evidence of a release of hazardous waste or hazardous constituents has been found.

(4) If evidence of a release has been found, the facility shall complete a detailed site assessment to determine the nature and extent of any contamination resulting from the release and shall submit a corrective action plan to the department, within one year of submittal of the standardized permit application.

(j) The department shall establish an inspection program to identify, inspect, and bring into compliance any treatment, storage, or treatment and storage facility that is eligible for, and is required to obtain, a standardized hazardous waste facilities permit pursuant to this section, and that is operating without a permit or other grant of authorization from the department for that treatment or storage activity.

(k) A treatment, storage, or treatment and storage facility authorized to operate pursuant to a hazardous waste facilities permit issued pursuant to Section 25200, that meets the criteria listed in subdivision (a) for a standardized permit, may operate pursuant to a Series A, B, or C standardized permit by completing the appropriate permit modification procedure specified in the regulations for such a modification.

SEC. 15. Section 25250.11 of the Health and Safety Code is amended to read:

25250.11. (a) Any person who receives used oil from consumers or other used oil generators, is exempt from hazardous waste facilities permit requirements imposed pursuant to Article 9 (commencing with Section 25200) with respect to any location at which used oil is received if all of the following conditions are met:

(1) Each shipment of used oil received does not exceed 55 gallons, and the capacity of any single container does not exceed 55 gallons.

(2) No other hazardous wastes are received at the location, unless authorized by other provisions of law.

(3) The used oil is transported by the generator of the used oil.

(b) Any person who transports used oil is exempt from the requirements of subdivision (a) of Section 25163 and from the requirements of Section 25160 concerning the possession of a manifest while transporting used oil to a location described in subdivision (a) if all of the following conditions are met:

(1) The capacity of any single container does not exceed 55 gallons.

(2) Each shipment of used oil does not exceed 55 gallons.

(3) The person transporting the used oil had generated the used oil.

(4) The person transporting the used oil does not transport greater than 20 gallons of used oil, and does not transport any used oil in any container exceeding 5 gallons in capacity, without first contacting the destination location described in subdivision (a) and verifying that the location will accept the used oil.

(c) This section does not prevent any person that receives used oil pursuant to subdivision (a) from placing volume limits or container size limits on the shipments of used oil accepted by that person that are smaller than the limits specified in this section.

SEC. 16. Section 25250.28 is added to the Health and Safety Code, to read:

25250.28. (a) For purposes of this section, ''automated onboard oil management system'' means a system designed to extend the intervals between necessary oil changes and diminish the use of crankcase oil by electronically sensing changes in the physical properties of the oil in the crankcase and, based on the properties detected, periodically transferring oil directly from the engine crankcase into the fuel tank to be burned as fuel.

(b) Notwithstanding any other provision of law, oil that is managed by an automated onboard oil management system is exempt from the requirements of this article and is excluded from classification as a waste under this chapter if all of the following conditions are satisfied:

(1) The system is applied to a mining vehicle with a gross vehicle weight capacity in excess of 200,000 pounds or a locomotive, and all of the following conditions are satisfied:

(A) Data concerning the air emissions associated with the operation of the system in those classes of equipment is submitted to the State Air Resources Board on or before January 1, 2002, and the data demonstrates that the operation of the system will not significantly impair the state's air quality. Mitigation measures may be provided to assist in satisfying this condition.

(B) The system is designed, maintained, and operated in a manner that does all of the following:

(i) The leakage of oil from any of the component parts of the system is prevented.

(ii) The quantity of used oil in the fuel tank at any given time is not more than 3 percent of the nominal capacity of the fuel tank.

(iii) The system meets the air emission criteria demonstrated by the applicant in the air emissions data submitted to the State Air Resources Board pursuant to subparagraph (A).

(C) Any mitigation provided to satisfy the air quality requirement in subparagraph (A) is maintained throughout the period of operation of the system or alternative satisfactory mitigation is provided.

(2) The system and the use of the system is approved by the State Air Resources Board, after consultation with the department, and all of the following requirements are satisfied:

(A) The State Air Resources Board determines that operation of the system will not significantly impair the state's air quality. Mitigation measures may be provided to assist in satisfying this requirement.

(B) A description of the manner in which the system will be operated to ensure compliance with the federal act and the Clean Air Act, as amended (42 U.S.C. Sec. 7401 et seq.) is submitted with the application for approval of the system pursuant to this paragraph and the system is operated in accordance with that description.

(C) The system is designed, maintained, and operated in a manner that prevents the leakage of oil from any of the component parts of the system.

(D) The system is designed, maintained, and operated in compliance with any conditions that the State Air Resources Board, after consultation with the department, determines to be necessary to ensure compliance with the requirements of this section.

(E) Any mitigation provided to satisfy the air quality requirement in subparagraph (A) is maintained throughout the period of operation of the system or alternative satisfactory mitigation is provided.

(c) This section does not exempt any of the following:

(1) Oil removed from an engine, other than through the operation of an automated onboard oil management system, from this article or from classification as a waste under this chapter.

(2) Emissions or other releases into the environment resulting from the operation of an automated onboard oil management system, from otherwise applicable air emissions standards, or any other applicable law.

(3) Oil managed by an automated onboard oil management system on vehicles authorized to be driven on the public highways pursuant to the Vehicle Code.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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.

SEC. 18. Sections 1 to 15, inclusive of this act shall become operative on January 1, 2002.

SEC. 19. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify and revise the laws regarding hazardous waste, thereby better protecting public health and safety and the environment, it is necessary for this act to take effect immediately.

CHAPTER 606

An act to add Sections 25210.71 and 57114.5 to the Government Code, to amend Section 116760.20 of, and to add Sections 4767.5 to, the Health and Safety Code, to add Section 13232.3 to the Public Resources Code, to amend Section 16574 of, and to add Section 16580 to, the Public Utilities Code, and to amend Sections 20527.13 and 79092 of, and to add Sections 12585.10, 24253, 31304.5, and 74570.5 to, the Water Code, relating to water, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. This act shall be known and may be cited as The Water Omnibus Act of 2001.

SEC. 1.5. Section 25210.71 is added to the Government Code, to read:

25210.71. The board of supervisors of any county may contract with any state agency to finance any improvement relating to the provision of water service, as defined in paragraph (1) of Section 25210.4a, within a county service area that is established to provide, among other services, water service. The terms of the contract shall be consistent with this chapter. Notwithstanding any other provision in this chapter, the term of the contract may extend up to 30 years.

SEC. 2. Section 57114.5 is added to the Government Code, to read:

57114.5. (a) Notwithstanding Sections 56854, 57111, and 57114, for any proposal involving the dissolution of the Newhall County Water District, the commission shall forward the change of organization or reorganization for confirmation by the voters if the commission finds that a petition requesting that the proposal be submitted to confirmation by the voters has been signed by either:

(1) At least 10 percent of the number of voters entitled to vote as a result of residing within the district.

(2) At least 10 percent of the number of landowners within the district who own at least 10 percent of the assessed value of land within the district.

(b) If a petition that meets the requirements of this section has been submitted, the commission shall approve the proposal subject to confirmation by the voters of the district.

SEC. 3. Section 4767.5 is added to the Health and Safety Code, to read:

4767.5. A district may contract with any state agency to finance any district improvement authorized by Section 4767. The terms of the contract shall be consistent with this chapter. Notwithstanding any other provision in this chapter, the term of the contract may extend up to 30 years.

SEC. 4. Section 116760.20 of the Health and Safety Code is amended to read:

116760.20. Unless the context otherwise requires, the following definitions govern the construction of this chapter:

(a) ''Cost-effective project'' means a project that achieves an acceptable result at the most reasonable cost.

(b) ''Department'' means the State Department of Health Services.

(c) ''Federal Safe Drinking Water Act'' or ''federal act'' means the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.) and acts amendatory thereof or supplemental thereto.

(d) ''Fund'' means the Safe Drinking Water State Revolving Fund created by Section 116760.30.

(e) ''Funding'' means a loan or grant, or both, awarded under this chapter.

(f) ''Matching funds'' means state money that equals that percentage of federal contributions required by the federal act to be matched with state funds.

(g) ''Project'' means proposed facilities for the construction, improvement, or rehabilitation of a public water system, and may include all items set forth in Section 116761 as necessary to carry out the purposes of this chapter. It also may include refinancing loans, annexation or consolidation of water systems, source water assessments,

source water protection, and other activities specified under the federal act.

(h) ''Public agency'' means any city, county, city and county, whether general law or chartered, district, joint powers authority, or other political subdivision of the state, that owns or operates a public water system.

(i) ''Public water system'' or ''public water supply system'' means a system for the provision to the public of water for human consumption, as defined in Chapter 4 (commencing with Section 116270), as it may be amended from time to time.

(j) ''Reasonable amount of growth'' means an increase in growth not to exceed 10 percent of the design capacity needed, based on peak flow, to serve the water demand in existence at the time plans and specifications for the project are approved by the department, over the 20-year useful life of a project. For projects other than the construction of treatment plants including, but not limited to, storage facilities, pipes, pumps, and similar equipment, where the 10-percent allowable growth cannot be adhered to due to the sizes of equipment or materials available, the project shall be limited to the next available larger size.

(k) ''Safe drinking water standards'' means those standards established pursuant to Chapter 4 (commencing with Section 116270), as they may now or hereafter be amended.

(*l*) ''Supplier'' means any persons, partnership, corporation, association, public agency, or other entity that owns or operates a public water system.

SEC. 5. Section 13232.3 is added to the Public Resources Code, to read:

13232.3. The Grizzly Lake Resort Improvement District, the Napa-Berryessa Resort Improvement District, and the Lake Berryessa Resort Improvement District may contract with any state agency to finance any district improvement authorized by this division that is related to the provision of water for human consumption. The terms of the contract shall be consistent with this division. Notwithstanding any other provision in this division, the term of the contract may extend up to 30 years.

SEC. 6. Section 16574 of the Public Utilities Code is amended to read:

16574. The board of directors or other officers of the district may not incur any debt or liability, either by issuing bonds or otherwise, in excess of the express provisions of this division. Any debt or liability incurred in excess of those express provisions is absolutely void, excepting that the debt limitations may be exceeded where the district finances waterworks or sewage disposal facilities by means of a revenue bond issue, or by means of a general obligation bond issue, or by means

provided by Section 16580 and makes provision to pledge, as additional security for the general obligation or indebtedness, all or any part of revenues received from the facilities over a period not to exceed 40 years, in which event the limitation of indebtedness set forth in Section 16573 of this code may not be applicable to the bonds or indebtedness so secured or so additionally secured by the revenue.

SEC. 7. Section 16580 is added to the Public Utilities Code, to read:

16580. A district may contract with any state agency to finance any district improvement authorized by Section 16461 that is related to the provision of water for human consumption. The terms of the contract shall be consistent with this chapter. Notwithstanding any other provision in this chapter, the term of the contract may extend up to 30 years.

SEC. 8. Section 12585.10 is added to the Water Code, to read:

12585.10. Section 161 does not apply to the adoption or revision of regulations, guidelines, or criteria to implement Section 12582.7 and 12585.7.

SEC. 9. Section 20527.13 of the Water Code is amended to read:

20527.13. (a) (1) This section only applies to the Corcoran Irrigation District. As used in this section, ''district'' means the Corcoran Irrigation District.

(2) Notwithstanding Section 20527 or any other provision of law, in the district, every owner of real property within the district, but no others, may vote at district elections. Owners need not be residents of the district in order to qualify as voters.

(b) The last equalized district assessment roll is conclusive evidence of ownership of the real property.

(c) (1) If land is owned in joint tenancy, tenancy in common, or any other multiple ownership, the owners of the land shall designate, in writing, which one of the owners is deemed the owner of the land for purposes of qualifying as a voter.

(2) The designation shall be made upon a form provided by the district, and shall be filed with the district at least 40 days prior to the election and shall remain in effect until amended or revoked. No amendment or revocation may occur within the period of 39 days prior to any election.

(d) The district shall provide a list of eligible voters pursuant to Section 10525 of the Elections Code at least 35 days prior to an election, which list shall provide for the limitation of one vote for each owner as specified in this section.

(e) The legal representative of a corporation or estate owning real property may vote on behalf of the corporation or estate.

(f) (1) Every voter, or his or her legal representative, may vote at any district election either in person or by a person appointed as his or her proxy, but may cast only one vote.

(2) Proxies shall be appointed pursuant to Section 35005.

(g) (1) Notwithstanding Section 21100 or any other provision of law, any voter or a voter's legal representative, as defined in this section, may be a member of the board of the district as long as the voter is a landowner within the division that the voter represents, unless the divisions have been abolished, as provided in Section 21550, and the voter resides within the boundaries of the district or the City of Corcoran.

(2) The requirements of this subdivision apply to any board member who is elected, or appointed to fill a vacancy, on or after the effective date of the act adding this subdivision.

(h) (1) As used in this section, ''legal representative'' means an official of a corporation owning real property or a guardian, conservator, executor, or administrator of the estate of the holder of title to real property who is all of the following:

(A) Appointed under the laws of this state.

(B) Entitled to the possession of the estate's real property.

(C) Authorized by the appointing court to exercise the particular right, privilege, or immunity which the legal representative seeks to exercise.

(2) Before a legal representative votes at a district election, the legal representative shall present to the precinct board a certified copy of his or her authority which shall be kept and filed with the returns of the election.

(i) (1) This section shall be operative as long as the district does not provide water, drainage services, electricity, flood control services, or sewage disposal services for domestic purposes for residents of the district.

(2) (A) This section shall become inoperative if the district commences to provide any of the services described in paragraph (1).

(B) The district shall notify the Secretary of State 30 days prior to commencing to provide any of the services described in paragraph (1). The notice required by this subparagraph shall state that it is being made pursuant to this subdivision.

SEC. 10. Section 24253 is added to the Water Code, to read:

24253. A district may contract with any state agency to finance any district improvement authorized by this division that is related to the provision of water for human consumption. The terms of the contract shall be consistent with this division. Notwithstanding any other provision in this division, the term of the contract may extend up to 30 years.

SEC. 11. Section 31304.5 is added to the Water Code, to read:

31304.5. A district may contract with any state agency to finance any district improvement authorized by this division that is related to the provision of water for human consumption. The terms of the contract shall be consistent with this division. Notwithstanding any other provision in this division, the term of the contract may extend up to 30 years.

SEC. 12. Section 74570.5 is added to the Water Code, to read:

74570.5. A district may contract with any state agency to finance any district improvement authorized by this division that is related to the provision of water for human consumption. The terms of the contract shall be consistent with this division. Notwithstanding any other provision in this division, the term of the contract may extend up to 30 years.

SEC. 13. Section 79092 of the Water Code is amended to read:

79092. Three million dollars ($3,000,000) in the subaccount, upon appropriation by the Legislature to the department, may be used by the department for allocation to California State University, Fresno for the purposes of establishing and furthering the purposes of the California Water Institute at that campus.

SEC. 14. The Legislature finds and declares all of the following:

(a) The Mojave River Basin encompasses approximately 3,600 square miles and suffers from a prolonged and continuing water overdraft.

(b) A stipulation among most of the Mojave River Basin water producers was presented to the trial court in City of Barstow v. Mojave Water Agency in settlement of water rights claims among the parties to that lawsuit.

(c) The California Supreme Court has published a decision in the case of City of Barstow v. Mojave Water Agency (2000) 23 Cal. 4th 1224.

(d) An issue has arisen as to whether the parties to the stipulation having water rights, by executing the stipulation, waived those water rights in the Mojave River Basin as to persons who were not parties to the stipulation.

(e) It is necessary to restate existing law.

SEC. 15. Entry into the stipulation in the City of Barstow v. Mojave Water Agency does not constitute a waiver of any water right or lawful priority to water held by any stipulating party as against any person not a party to the stipulation.

SEC. 16. (a) Pursuant to Sections 14011 and 14012 of the Water Code, the Department of Water Resources may make grants from the California Safe Drinking Water Fund in accordance with the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000) of Division 7 of the Water Code) to the following entities

for the purpose of financing domestic water system improvement projects to meet state and federal drinking water standards:

(1) City of Crescent City in Del Norte County for up to four hundred thousand dollars ($400,000).

(2) City of Crescent City (Roosevelt System) in Del Norte County for up to one hundred thousand dollars ($100,000).

(3) Weaver Union School in Merced County for up to seventy-five thousand dollars ($75,000).

(4) Bradley Union School in Monterey County for up to one hundred ten thousand dollars ($110,000).

(5) Captain Cooper School in Monterey County for up to two hundred forty thousand dollars ($240,000).

(6) San Antonio Elementary School in Monterey County for up to forty thousand dollars ($40,000).

(7) Sanger Unified School District in Fresno County for up to two hundred thousand dollars ($200,000).

(8) Westside School in Fresno County for up to two hundred thousand dollars ($200,000).

(9) Oasis School in Riverside County for up to one hundred twenty-five thousand dollars ($125,000).

(10) Latrobe Elementary School District in El Dorado County for up to one hundred twenty-five thousand dollars ($125,000).

(11) Mulberry Union School District in Imperial County for up to seventy-five thousand dollars ($75,000).

(12) La Honda Elementary School in San Mateo County for up to forty thousand dollars ($40,000).

(13) South Fork School Water System in Kern County for up to three hundred forty-five thousand dollars ($345,000).

(14) Spring Valley School in San Luis Obispo County for up to four hundred thousand dollars ($400,000).

(15) Delta View School in Kings County for up to two hundred twenty-five thousand dollars ($225,000).

(16) Honeydew Elementary School in Humboldt County for up to twenty thousand dollars ($20,000).

(17) Mountain Union School District in Shasta County for up to thirty thousand dollars ($30,000).

(18) Wilson Elementary School in Sonoma County for up to sixty-five thousand dollars ($65,000).

(19) Fort Ross School District in Sonoma County for up to sixty-five thousand dollars ($65,000).

(20) Pajaro/Sunny Mesa Community Services District II in Monterey County for up to four hundred thousand dollars ($400,000).

(b) The Department of Water Resources shall determine eligibility for, and the amount of, any grant authorized in subdivision (a) in

accordance with the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000) of Division 7 of the Water Code), and may make those grants in accordance with that bond law.

SEC. 17. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to remedy critical water quality and supply problems, and to make other modifications to the Water Code, as soon as possible, thereby protecting the public health and safety, it is necessary that this act take effect immediately.

CHAPTER 607

An act to amend Sections 6980.79, 7570, 7582.12, 7582.20, 7582.21, 7582.26, 7582.27, 7582.28, 7583.7, 7587.7, 7587.8, 7587.9, 7587.10, 7587.12, 7587.14, 7588, and 7599.70 of the Business and Professions Code, relating to private security services, and making an appropriation therefor.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 6980.79 of the Business and Professions Code is amended to read:

6980.79. The fees prescribed by this chapter are those fixed in the following schedule:

(a) A locksmith license application fee may not exceed thirty dollars ($30).

(b) An original license and renewal fee for a locksmith license may not exceed forty-five dollars ($45).

(c) A branch office registration fee and branch office renewal fee may not exceed thirty-five dollars ($35).

(d) Notwithstanding Section 163.5, the reinstatement fee as required by Section 6980.28 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(e) An initial registration fee for an employee may not exceed twenty dollars ($20).

(f) A registration renewal fee for an employee performing the services of a locksmith may not exceed twenty dollars ($20).

(g) The fingerprint processing fee is that amount charged the bureau by the Department of Justice.

(h) All applicants seeking a license pursuant to this chapter shall also remit to the bureau the fingerprint fee that is charged to the bureau by the Department of Justice.

(i) The fee for a ''Certificate of Licensure'' may not exceed twenty dollars ($20).

(j) A delinquency fee is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

SEC. 2. Section 7570 of the Business and Professions Code is amended to read:

7570. The fees prescribed by this chapter are as follows:

(a) The application and examination fee for an original license may not exceed fifty dollars ($50).

(b) The application fee for an original branch office certificate may not exceed thirty dollars ($30).

(c) The fee for an original license for a private investigator may not exceed one hundred seventy-five dollars ($175).

(d) The renewal fee is as follows:

(1) For a license as a private investigator, the fee may not exceed one hundred twenty-five dollars ($125).

(2) For a combination license as a private investigator and private patrol operator under Chapter 11.5 (commencing with Section 7580), AC or DC prefix, the fee may not exceed six hundred dollars ($600).

(3) For a branch office certificate for a private investigator, the fee may not exceed thirty dollars ($30), and for a combination private investigator and private patrol operator under Chapter 11.5 (commencing with Section 7580), the fee may not exceed forty dollars ($40).

(e) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration.

(f) A reinstatement fee is equal to the amount of the renewal fee plus the regular delinquency fee.

(g) The fee for reexamination of an applicant or his or her manager may not exceed fifteen dollars ($15).

SEC. 3. Section 7582.12 of the Business and Professions Code is amended to read:

7582.12. (a) The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

(b) The director may assess a fine of two hundred fifty dollars ($250) per violation of subdivision (a).

SEC. 4. Section 7582.20 of the Business and Professions Code is amended to read:

7582.20. (a) Every advertisement by a licensee soliciting or advertising business shall contain his or her name, address and license number as they appear in the records of the bureau. For the purpose of this section, ''advertisement'' includes any business card, stationary, brochure, flyer, circular, newsletter, fax form, printed or published paid advertisement in any media form, or telephone book listing. Every advertisement by a licensee soliciting or advertising the licensee's business shall contain his or her business name, business address or business telephone number, and license number, as they appear in the records of the bureau.

(b) The director may assess a fine of two hundred fifty dollars ($250) per violation of subdivision (a).

SEC. 5. Section 7582.21 of the Business and Professions Code is amended to read:

7582.21. (a) A licensee shall not advertise or conduct business from any location other than that shown on the records of the bureau as his or her principal place of business unless he or she has received a branch office certificate for the location after compliance with the provisions of this chapter and any additional requirements necessary for the protection of the public as the director may by regulation prescribe. A licensee shall notify the bureau in writing within 10 days after closing or changing the location of a branch office.

(b) The director may assess a fine of five hundred dollars ($500) for the first violation of subdivision (a) and one thousand dollars ($1,000) for each violation thereafter.

SEC. 6. 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.

The director may assess a fine of two hundred fifty dollars ($250) per violation of this subdivision.

(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. 7. Section 7582.27 of the Business and Professions Code is amended to read:

7582.27. (a) Any person referred to in subdivision (i) of Section 7582.26 who uses or wears a baton or exposed firearm as authorized pursuant to this chapter shall wear a patch on each arm that reads ''private security'' and that includes the name of the company by which the person is employed or for which the person is a representative. The patch shall be clearly visible at all times. The patches of a private patrol operator licensee, or his or her employees or representatives shall be of a standard design approved by the director.

(b) The director may assess a fine of two hundred fifty dollars ($250) per violation of subdivision (a).

SEC. 8. Section 7582.28 of the Business and Professions Code is amended to read:

7582.28. (a) Any badge or cap insignia worn by a person who is a licensee, officer, director, partner, manager, or employee of a licensee shall be of a design approved by the director, and shall bear on its face a distinctive word indicating the name of the licensee and an employee number by which the person may be identified by the licensee.

The provisions of this section shall not be construed to authorize persons to wear badges who are prohibited by Section 7582.26 from wearing badges.

(b) The director may assess a fine of two hundred fifty dollars ($250) per violation of subdivision (a).

SEC. 9. Section 7583.7 of the Business and Professions Code is amended to read:

7583.7. (a) The course of training in the exercise of the power to arrest may be administered, tested, and certified by any licensee. The department may approve any person or school to teach the course in the exercise of the power to arrest. The course of training shall be approximately three hours in length and shall cover the following topics:

(1) Responsibilities and ethics in citizen arrest.

(2) Relationship between a security guard and a peace officer in making an arrest.

(3) Limitations on security guard power to arrest.

(4) Restrictions on searches and seizures.

(5) Criminal and civil liabilities.

(A) Personal liability.

(B) Employer liability.

(6) Any other topic deemed appropriate by the bureau.

(b) The majority of the course shall be taught by means of verbal instruction. This instruction may include the use of a video presentation.

(c) The department shall make available a guidebook as a standard for teaching the course in the exercise of the power to arrest. The department shall encourage additional training and may provide a training guide recommending additional courses to be taken by security personnel.

(d) Private patrol operators shall provide a copy of the guidebook described in subdivision (c) to each person they currently employ as a security guard and to each individual they intend to hire as a security guard. The private patrol operator shall provide the guidebook to each person he or she intends to hire as a security guard a reasonable time prior to the time the person begins the course in the exercise of the power to arrest.

(e) The bureau may inspect, supervise, or view the administration of the test at any time and without any prior notification. Any impropriety in the administration of the course or the test shall constitute grounds for disciplinary action.

SEC. 10. Section 7587.7 of the Business and Professions Code is amended to read:

7587.7. If, upon investigation, the director determines a licensee, including a corporation, or registrant is in violation of Section 7583.2, 7583.3, 7583.37, 7585.19, 7587.2, or 7587.14, the director may issue a citation to the licensee or registrant. The citation shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated. If the director deems it appropriate, the citation may contain an order of abatement fixing a reasonable time for abatement of the violation and may contain an assessment of an administrative fine. The amount of the fine shall in no event exceed two thousand five hundred dollars ($2,500) or as otherwise provided in this chapter, whichever is less.

A citation or fine assessment shall inform the licensee or registrant that if he or she contests the finding of a violation, they may request a review by a disciplinary review committee in accordance with Section 7581.3. If a review is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. If a review is not allowed under this chapter, a licensee or registrant may request a hearing in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if he or she wishes to contest the findings of a violation, and if a hearing is not requested, payment of any fines shall not constitute an admission of the violation charged.

If the licensee or registrant neither requests a review, nor pays the assessed fine within 30 days of the assessment, the license or registration of the person shall not be renewed pursuant to the provisions of this chapter until the assessed fine is paid.

Administrative fines collected pursuant to this article shall be deposited in the Private Security Services Fund, which fund is hereby created to carry out the purposes of this chapter.

SEC. 11. 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; one hundred dollars ($100) per violation.

(b) Violation of subdivisions (h) and (i) of Section 7583.2; one hundred dollars ($100) for the first violation and two hundred fifty dollars ($250) per violation for each violation thereafter.

(c) Violation of subdivision (d) of Section 7583.2; one hundred dollars ($100) per violation.

(d) Violation of subdivision (g) of Section 7583.2; five hundred dollars ($500) for the first violation and one thousand five hundred dollars ($1,500) per violation for each violation thereafter.

(e) Violation of subdivision (f) of Section 7583.2; two thousand five hundred dollars ($2,500) per violation, notwithstanding any other provision of law.

SEC. 12. Section 7587.9 of the Business and Professions Code is amended to read:

7587.9. 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) and (b) of Section 7583.3; twenty-five dollars ($25) for the first violation and fifty dollars ($50) per violation for each violation thereafter.

(b) Violation of subdivision (c) of Section 7583.3; two hundred fifty dollars ($250) for the first violation and five hundred dollars ($500) per violation for each violation thereafter.

(c) Violation of Section 7583.4; two hundred fifty dollars ($250) for the first violation and five hundred dollars ($500) per violation for each violation thereafter.

SEC. 13. Section 7587.10 of the Business and Professions Code is amended to read:

7587.10. The director may assess fines for the following acts pursuant to Article 4 (commencing with Section 7583) only as follows:

(a) Violation of subdivisions (c) and (d) of Section 7583.37; one hundred dollars ($100) for the first violation and two hundred dollars ($200) for each violation thereafter.

(b) Violation of subdivision (a) of Section 7583.37; one hundred dollars ($100) for the first violation and five hundred dollars ($500) for each violation thereafter.

(c) Violation of subdivision (e) of Section 7583.37; one thousand dollars ($1000).

(d) Violation of subdivision (b) of Section 7583.37; one thousand dollars ($1000) for the first violation and suspension of a firearm qualification card for six months for each violation thereafter.

SEC. 14. Section 7587.12 of the Business and Professions Code is amended to read:

7587.12. The director may assess fines for the following acts only as follows:

(a) Violations of paragraph (1), (2), (11), or (12) of subdivision (a) of Section 7585.19; one hundred dollars ($100) for the first violation and five hundred dollars ($500) for subsequent violations.

(b) Violations of paragraph (3), (7), (8), or (10) of subdivision (a) of Section 7585.19; five hundred dollars ($500) for each violation.

(c) Violations of paragraph (6) of subdivision (a) of Section 7585.19; two hundred fifty dollars ($250) for each hour shortened.

(d) Violations of paragraph (4) of subdivision (a) of Section 7585.19; five hundred dollars ($500) for each violation.

(e) Violations of paragraph (5) of subdivision (a) of Section 7585.19; five hundred dollars ($500) for every hour the course has been shortened.

(f) Violations of paragraph (9) of subdivision (a) of Section 7585.19; one thousand dollars ($1,000) for each violation.

SEC. 15. Section 7587.14 of the Business and Professions Code is amended to read:

7587.14. The director may assess administrative fines against any licensee, registrant, or firearms qualification cardholder for failure to notify the bureau within 30 days of any change of residence or business address. The principal place of business may be at a home or at a business address, but it shall be the place at which the licensee maintains a permanent office.

(a) The fine shall be twenty-five dollars ($25) for the first violation and fifty dollars ($50) per violation for each violation thereafter by a licensee.

(b) The fine shall be fifty dollars ($50) for each violation by a registrant or a firearms qualification cardholder.

SEC. 16. Section 7588 of the Business and Professions Code is amended to read:

7588. The fees prescribed by this chapter are as follows:

(a) The application and examination fee for an original license for a private patrol operator may not exceed five hundred dollars ($500).

(b) The application fee for an original branch office certificate for a private patrol operator may not exceed two hundred fifty dollars ($250).

(c) The fee for an original license for a private patrol operator may not exceed seven hundred dollars ($700).

(d) The renewal fee is as follows:

(1) For a license as a private patrol operator, the fee may not exceed seven hundred dollars ($700).

(2) For a combination license as a private investigator under Chapter 11.3 (commencing with Section 7512) and private patrol operator, AC or DC prefix, the fee may not exceed six hundred dollars ($600).

(3) For a branch office certificate for a combination private investigator under Chapter 11.3 (commencing with Section 7512) and private patrol operator, the fee may not exceed forty dollars ($40), and

for a private patrol operator, the fee may not exceed seventy-five dollars ($75).

(e) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration.

(f) A reinstatement fee is equal to the amount of the renewal fee plus the regular delinquency fee.

(g) The fee for reexamination of an applicant or his or her manager shall be the actual cost to the bureau for developing, purchasing, grading, and administering each examination.

(h) Registration fees pursuant to this chapter are as follows:

(1) A registration fee for a security guard may not exceed forty dollars ($40).

(2) A security guard registration renewal fee may not exceed thirty dollars ($30).

(i) Fees to carry out other provisions of this chapter are as follows:

(1) A firearms qualification fee may not exceed eighty dollars ($80).

(2) A firearms requalification fee may not exceed sixty dollars ($60).

(3) An initial baton certification fee may not exceed fifty dollars ($50).

(4) An application fee and renewal fee for certification as a firearms training facility or a baton training facility may not exceed five hundred dollars ($500).

(5) An application fee and renewal fee for certification as a firearms training instructor or a baton training instructor may not exceed two hundred fifty dollars ($250).

SEC. 17. Section 7599.70 of the Business and Professions Code is amended to read:

7599.70. Effective July 1, 1998, the bureau shall establish and assess fees and penalties for licensure and registration as follows:

(a) A company license application fee may not exceed thirty-five dollars ($35).

(b) An original license fee for an alarm company operator license may not exceed two hundred eighty dollars ($280). A renewal fee for an alarm company operator license may not exceed three hundred thirty-five dollars ($335).

(c) A qualified manager application and examination fee may not exceed one hundred five dollars ($105).

(d) A renewal fee for a qualified manager may not exceed one hundred twenty dollars ($120).

(e) An original license fee and renewal fee for a branch office certificate may not exceed thirty-five dollars ($35).

(f) Notwithstanding Section 163.5, the reinstatement fee as required by Sections 7593.12 and 7598.17 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(g) A fee for reexamination of an applicant for a qualified manager may not exceed two hundred forty dollars ($240).

(h) An initial registration fee for an alarm agent may not exceed seventeen dollars ($17).

(i) A registration renewal fee for an alarm agent may not exceed seven dollars ($7).

(j) A firearms qualification fee may not exceed eighty dollars ($80) and a firearms requalification fee may not exceed sixty dollars ($60).

(k) The fingerprint processing fee is that amount charged the bureau by the Department of Justice.

(*l*) The processing fee required pursuant to Sections 7593.7 and 7598.14 is the amount equal to the expenses incurred to provide a photo identification card.

(m) The fee for a ''Certificate of Licensure'' may not exceed fifty dollars ($50).

(n) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration, but not less than twenty-five dollars ($25).

CHAPTER 608

An act to amend Section 50544 of the Health and Safety Code, relating to balancing jobs and housing.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 50544 of the Health and Safety Code is amended to read:

50544. (a) One hundred million dollars ($100,000,000) of the funds transferred for purposes of this chapter in Item 2240-114-0001 of the Budget Act of 2000, any funds transferred in Item 2240-114-0001 and appropriated pursuant to Item 2240-114-3006 in the Budget Act of 2001, and any funds appropriated thereafter for the purposes of this section shall be used to award incentive grants to cities, counties, and city and counties to be used for any project, service, or other local need determined by the city, county, or city and county to be in the community's best interest. Grants shall be provided through a grant agreement that requires the recipient to provide to the department a report on the number of residential building permits issued during the reporting period, the number of certificates of occupancy issued for those units, and the services provided or amenities purchased or built.

The department may operate this program through at least one annual allocation. In addition, because housing production may be affected by economic factors during the course of any allocation year, the department may, if it deems necessary, reasonably adjust incentive criteria to meet the intent of this section and allow funding to remain available for subsequent annual funding cycles upon expenditure authorization by the Legislature.

(b) To be eligible for a grant pursuant to this section, a local government shall do both of the following:

(1) By the end of the calendar year in which unit production is to be counted (hereafter referred to as ''allocation reporting year''), have an adopted housing element that the department has determined pursuant to Section 65585 of the Government Code to be in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(2) Have a demonstrable and significant increase in the issuance of residential building permits issued between January 1 and December 31 of the allocation reporting year over the average number of building permits issued annually for the most recent 36-month period that can be calculated prior to the allocation reporting year. The department shall establish a benchmark level to be achieved in order to establish eligibility for funding based on criteria including a survey of economic forecasts to be conducted by the Department of Finance no later than November 30 of the year prior to the reporting year for any year in which the program is to be operated.

(c) Grant amounts shall be determined as a per-unit incentive weighted for high, medium, and low employment demand areas. In addition, the department shall provide additional incentives for units in projects within eligible communities that meet criteria designed to encourage planning priorities such as affordability, multifamily housing, and infill development. The department shall establish the definitions and measurement specifications for the incentive criteria to be used to determine grant amounts that are easily and objectively verifiable.

(d) Funding shall be provided as soon after January 1 of the year following the allocation reporting year, as is reasonably possible, allowing time for receipt by the Department of Finance of yearend production figures as well as other information necessary to apply the established criteria. If all funds are not expended after the end of the calendar year in which housing production is counted, the department may continue the program into the following year if it determines there are adequate appropriated funds to administer the program. If residential production within eligible jurisdictions exceeds the department's

projections, per-unit incentives shall be prorated within the appropriated funding amount.

(e) The department shall solicit and consider comments from interested parties on the criteria that shall be used for determining the amount of funds granted per unit. The department may deny funding to any jurisdiction that it determines, based on reasonable evidence, failed to issue residential building permits on a timely basis between the effective date of this chapter and January 1, 2001, or, where the department determines, upon reasonable evidence, that the jurisdiction inappropriately withheld the issuance of building permits so that it could be counted in a subsequent allocation reporting year.

(f) No later than December 31, 2002, and on December 31 of each subsequent year in which funds are expended, the department shall provide an interim report to the Legislature indicating the benchmark levels of production established, the number of jurisdictions accessing the program, the number of residential units building permits issued above the established benchmark, and the success of the additional incentives in achieving state housing policies. When all funds have been expended, the department shall provide a final report with updates to the data contained in the previous reports, a description of the achievements and expenditures by local governments through the program and information regarding the number of certificates of occupancy issued in relation to the residential building permits issued. The report shall be issued within twelve months following the final allocation of funds.

CHAPTER 609

An act to add Section 236.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 236.5 is added to the Revenue and Taxation Code, to read:

236.5. Any otherwise taxable interest in real property, leased for an original term of 35 years or more and used exclusively by the lessee for the operation of a public park that is uniquely of a governmental character, as described in paragraph (4) of subdivision (b) of Section 231, is, during the term of the lease, within the exemption provided for

in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution, if all of the following conditions are met:

(a) The lessee is a charitable foundation that has received a determination that it is a charitable organization as described in Section 501(c)(3) of the Internal Revenue Code.

(b) The operation of the public park by the lessee is within the tax exempt purposes of the lessee.

(c) The lessee acquired the leasehold in the property by means of a charitable donation.

(d) Under the terms of the lease, the lessee will acquire the entire ownership interest in the property on or before the end of the lease term.

SEC. 2. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 610

An act to amend Section 11011.21 of, to add Section 14672.99 to, and to add and repeal Section 14672.86 of, the Government Code, to amend Sections 12126, 12128, and 12129 of the Public Contract Code, to amend Section 4 of Chapter 870 of, and to repeal Section 6 of Chapter 870 of, the Statutes of 1999, to amend Section 12 of Chapter 784 of the Statutes of 1997, and to repeal Section 2 of Chapter 417 of the Statutes of 1996, relating to state property.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 11011.21 of the Government Code is amended to read:

11011.21. (a) The Legislature finds and declares that the Department of General Services has, pursuant to former Section 11011.21, as added by Section 8 of Chapter 150 of the Statutes of 1994, and amended by Section 15 of Chapter 422 of the Statutes of 1994, developed an inventory, known as the Surplus Property Inventory, of state-owned properties that are either surplus to the needs of the state in their entirety or are being used for a state program and some portions of the property are unused or underutilized.

(b) State agencies, when purchasing real property, shall review the Surplus Property Inventory and purchase, lease, or trade property on that list, if possible, prior to purchasing property not on the Surplus Property Inventory.

(c) The Department of General Services may sell, lease, exchange, or transfer for current market value, or upon terms and conditions as the Director of General Services determines are in the best interest of the state, all or part of properties as follows:

Parcel 1. Approximately 292 acres with improvements thereon, known as the Agnews Developmental Center-West Campus, bounded by Lick Mill Blvd., Montague Expressway, Lafayette Street and Hope Drive, in Santa Clara, Santa Clara County.

Parcel 2. Approximately 56 acres known as a portion of the Agnews Developmental Center-East Campus, located between the Agnews Developmental Center and Coyote Creek, in San Jose, Santa Clara County.

Parcel 3. Approximately 102 acres with improvements thereon, known as the Stockton Developmental Center, located at 510 E. Magnolia Street, in Stockton, San Joaquin County.

Parcel 4. Approximately 12.72 acres with improvements thereon, formerly used as a Department of Forestry and Fire Protection facility, known as Bolinger Canyon Pest Management Facility, located off Highway 680 at 18112-18114 Bolinger Canyon Road, in San Ramon, Contra Costa County.

Parcel 5. Approximately one acre with improvements thereon, known as the California Department of Forestry and Fire Protection, Cottonwood Pass Forest Fire Station, located three miles west of Highway 33 on the south side of Highway 41, in Kings County.

Parcel 6. Approximately 33.56 acres with improvements thereon, known as the California Highway Patrol Motor Transport Facility and Shop, located at 2800 Meadowview Road, in Sacramento, Sacramento County.

Parcel 7. Approximately 1.03 acres of land, not including improvements thereon, located at 1614 O Street, in Sacramento, Sacramento County, and leased by the Department of General Services to the Capital Area Development Authority for development of the 17th Street Commons condominiums.

Parcel 8. Approximately 2 acres of land, not including improvements thereon, located on a portion of block 273 bound by 10th, 11th, P, and Q Streets, in Sacramento, Sacramento County, and leased by the Department of General Services to the Capital Area Development Authority for development of the Somerset Parkside condominiums.

Parcel 9. Approximately 1.76 acres of land, not including improvements thereon, located on the south $^1/_2$ of block bound by 15th,

16th, O, and P Streets and the south 1/4 of block bound by 14th, 15th, O, and P Streets, in Sacramento, Sacramento County, and leased by the Department of General Services to the Capital Area Development Authority for development of the Stanford Park condominiums.

Parcel 10. Approximately 1.18 acres of land, not including improvements thereon, located on the north 1/2 of block bound by 9th, 10th, Q, and R Streets, in Sacramento, Sacramento County, and leased by the Department of General Services to the Capital Area Development Authority for development of the Saratoga Townhomes.

Parcel 11. Approximately 3.66 acres including improvements thereon, known as the Department of General Services, Junipero Serra State Office Building, located at 107 S. Broadway, in Los Angeles, Los Angeles County.

Parcel 12. Approximately 32 acres including improvements thereon, being a portion of the State Department of Developmental Services Fairview Developmental Center, located at 2501 Harbor Blvd., in Costa Mesa, Orange County.

Parcel 13. Approximately 3.6 acres, with improvements thereon. Entire structure used as the Delano Armory by the Military Department, located at 705 South Lexington Street, in Delano, Kern County.

Parcel 14. Approximately 5 acres of vacant land, being a portion of the Military Department's San Diego Armory, located at 7401 Mesa College Drive, in San Diego, San Diego County.

Parcel 16. Approximately 1,720 acres of agricultural land, being a portion of the Department of Corrections' Imperial South Centinella Prison, located at 2302 Brown Road, in Imperial, Imperial County, which shall only be available for lease.

Parcel 17. Approximately 800 acres of agricultural land, being a portion of the Department of Corrections' Imperial North Calipatria Prison, located at 7018 Blair Road, in Calipatria, Imperial County, which shall only be available for lease.

(d) The Director of General Services, after further study and with the consent of the agency in control and possession of the property, may sell, lease, exchange, or transfer for current market value, upon terms and conditions as the director determines are in the best interest of the state, portions of properties as follows:

Parcel 1. Excess acreage of the Department of Forestry and Fire Protection, known as the Alder Conservation Camp, located at 1400 Alder Camp Road, in Klamath, Del Norte County, near Highway 101 and Highway 169. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Department of Forestry and Fire Protection.

Parcel 2. Excess acreage of the Department of Forestry and Fire Protection, known as the Deadwood Conservation Camp, located at

17140 McAdams Creek Road, in Fort Jones, Siskiyou County, north of Fort Jones off Highway 3. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Department of Forestry and Fire Protection.

Parcel 3. Excess acreage of the Department of Forestry and Fire Protection, known as the Eel River Conservation Camp, located in Redway, Humboldt County, north of Garberville off Highway 101. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Department of Forestry and Fire Protection.

Parcel 4. Excess acreage of the Department of Forestry and Fire Protection, known as the Fawn Lodge Forest Fire Station, located on Fawn Lodge Road off Highway 299, in Weaverville, Trinity County. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Department of Forestry and Fire Protection.

Parcel 5. Excess acreage of the Department of Forestry and Fire Protection, known as the Miramonte Conservation Camp, located at 49039 Orchard Drive, in Miramonte, Fresno County. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Department of Forestry and Fire Protection.

Parcel 6. Excess acreage with improvements thereon, of the Department of Forestry and Fire Protection's Mt. Zion Lookout, located at the end of Mount Zion Road, in Pine Grove, Amador County. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Department of Forestry and Fire Protection.

Parcel 7. Excess acreage of the Department of Forestry and Fire Protection, known as the Shingletown Forest Fire Station, located off Highway 44, in Shingletown, Shasta County. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Department of Forestry and Fire Protection.

Parcel 8. Excess acreage of Department of Forestry and Fire Protection, known as the Tularcitos Forest Fire Station, located on Cachagua Road off Valley Road, in Carmel, Monterey County. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Department of Forestry and Fire Protection.

Parcel 9. Excess acreage of Department of Forestry and Fire Protection, known as the Wolf Creek Forest Fire Station, located at 10106 Combie Road, in Higgins Corners, Nevada County. Specific parcels available for disposition to be determined through a study by the

Department of General Services and the Department of Forestry and Fire Protection.

Parcel 11. Excess acreage of the Military Department's Camp San Luis Obispo, located on Highway 101 north of San Luis Obispo, in San Luis Obispo County. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Military Department.

Parcel 12. Vacant land of the Military Department's Camp Escondido Armory located at 304 East Park Avenue, in Escondido, San Diego County. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Military Department.

Parcel 13. Excess acreage of the Military Department's Hollister Armory, located at 2302 San Felipe Road, in Hollister, San Benito County. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Military Department.

Parcel 14. Excess acreage of the Military Department's Merced Armory, located at 1240 West 8th Street, in Merced, Merced County. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Military Department.

Parcel 15. Excess acreage of the Military Department's Salinas Armory, located at Howard and Lincoln Streets, in Salinas, Monterey County. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Military Department.

Parcel 16. Excess acreage of the Military Department's Visalia Armory, located at 1100 North Akers Road, in Visalia, Tulare County. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Military Department.

Parcel 17. Excess acreage of the Military Department's Willows Armory, located at 950 West Laurel Street, in Willows, Glenn County. Specific parcels available for disposition to be determined through a study by the Department of General Services and the Military Department.

(e) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of any parcels.

(f) Notices of every public auction or bid opening shall be posted on the property to be sold pursuant to this section, and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated.

(g) Any sale, exchange, lease, or transfer of a parcel described in this section is exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(h) As to any property sold pursuant to this section consisting of 15 acres or less, the Director of General Services shall except and reserve to the state all mineral deposits possessed by the state, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. As to property sold pursuant to this section consisting of more than 15 acres, the director shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed that the director, after consultation with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

(i) The net proceeds of any moneys received from the disposition of any parcels described in this section shall be deposited in the General Fund.

SEC. 2. Section 14672.86 is added to the Government Code, to read:

14672.86. (a) The Director of General Services may transfer and convey, without charge or consideration, to the City of Richmond, all rights, title, and interest, including any equitable interest, held by the state in the real property situated at 343 22nd Street, Richmond, California, if the city has received a transfer of property interests from the United States for any interest held by the Unites States Department of Labor in that property. The Legislature hereby finds that it has deemed the subject property, formerly used as an Employment Development Department office, as surplus.

As a condition of the transfer pursuant to this section, the City of Richmond shall agree to reimburse the Department of General Services for its costs related to the transfer, including, but not limited to, any survey costs, title transfer fees, and department staff time.

(b) 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. 3. Section 14672.99 is added to the Government Code, to read:

14672.99. (a) Notwithstanding Section 14670, the Director of General Services, with the consent of the Department of the Youth Authority, shall lease a five acre portion of the Ione Youth Facility as designated by the Department of the Youth Authority, for a term not to exceed 30 years and at the rate of one dollar ($1) per year, to the County

of Amador on behalf of the Mother Lode Juvenile Facility Authority for use as a regional juvenile detention facility.

(b) The lease shall provide that the property shall be leased ''as is'' and that the state shall have no liability for repairs, rehabilitation, or other improvements. It shall provide that the lessee county or the authority shall complete the detention facility not later than three years after the effective date of the lease, and that the facility shall be operated by the authority pursuant to the terms of the lease.

(c) The lease described in this section shall be exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

(d) The Department of General Services shall be reimbursed for its costs related to the lease, including, but not limited to, any survey costs, title transfer fees, and department staff time.

(e) For purposes of this section, ''Mother Lode Juvenile Facility Authority'' means the joint powers authority comprising the Counties of Amador, Calaveras, and Tuolumne.

(f) The Legislature finds and declares that the lease of a portion of the Ione Youth Facility to the County of Amador on behalf of the Mother Lode Juvenile Facility Authority for use as a juvenile detention facility pursuant to this section, is for a statewide public purpose.

SEC. 4. Section 12126 of the Public Contract Code is amended to read:

12126. (a) Notwithstanding any other provision of law, any department or agency may use the solicitation and alternative protest procedures outlined in this chapter for solicitations authorized under Chapter 2 (commencing with Section 10290) or Chapter 3 (commencing with Section 12100). The Department of General Services shall develop procedures and guidelines for the implementation of this pilot project. Establishment of procedures for major information technology acquisitions pursuant to this chapter shall be coordinated with the Department of Information Technology.

(b) To be eligible for this pilot project, the contracting department shall agree to participate in the pilot project and the Department of General Services shall indicate that the proposed solicitation shall be conducted as part of the pilot project prior to release of the solicitation. Submission of a bid constitutes consent for participation in the alternative protest pilot project. Any protests filed in relation to the proposed contract award shall be conducted under the procedures set forth by the Department of General Services for the alternative protest pilot project.

(c) Notwithstanding any other provision of law to the contrary, any bid protest conducted under this chapter shall include one or more of the following alternative procedures:

(1) The protest process shall not prevent the commencement of work in accordance with the terms of any other contract awarded pursuant to this chapter. A contract may be entered into pending a final decision on the protest.

(2) The Department of General Services shall review the protest within seven days of the filing date to determine if the protest is frivolous. If determined to be frivolous, the protest shall not proceed under this chapter until the bidder posts a protest bond in an amount not less than 10 percent of the estimated contract value, as determined by the Department of General Services in the solicitation.

(3) The Director of General Services shall issue a decision within a period not to exceed 45 days from the date the protest is filed.

(4) Arbitration, as defined and established by the Department of General Services, shall be the resolution tool.

(d) Authority to protest under this chapter shall be limited to participating bidders.

(1) Grounds for major information technology acquisition protests shall be limited to violations of the solicitation procedures and that the protestant should have been selected.

(2) Any other acquisition protest filed pursuant to this chapter shall be based on the ground that the bid or proposal should have been selected in accordance with selection criteria in the solicitation document.

SEC. 5. Section 12128 of the Public Contract Code is amended to read:

12128. The pilot project shall continue until it has been applied to at least 25 contracts, with varying dollar amounts, at least five of which are major information technology acquisitions, or until December 31, 2005, whichever occurs later. The Department of General Services shall apply this chapter to the following categories:

(a) Information technology and ancillary services.

(b) Material, supplies, equipment, and ancillary services.

SEC. 6. Section 12129 of the Public Contract Code is amended to read:

12129. The Department of General Services shall electronically submit a report to the Legislature regarding the pilot project within 90 days after the termination of the project. The report shall include the following:

(a) The percentage of bids with values under five hundred thousand dollars ($500,000), under one million dollars ($1,000,000), and over one million dollars ($1,000,000) or more not in the pilot project that were protested with corresponding data for solicitations issued pursuant to the pilot project.

(b) The number of protests determined to be frivolous by the Department of General Services, subject to this chapter, with

corresponding data for solicitations issued pursuant to existing procedures.

(c) The percentage of contracts awarded under the pilot project that were subsequently challenged in a court of law with corresponding data for solicitations issued pursuant to existing procedures.

(d) All costs of a protest incurred by state agencies subject to subdivision (b) of Section 12126 from the original date filed, until final resolution. This shall include all costs associated with a successful protest and commencement of work under subdivision (b) of Section 12126 from the original date filed, until final resolution, with corresponding data for solicitations issued pursuant to existing procedures.

(e) The length of time to resolve protests pursuant to this chapter and the corresponding data for solicitations issued pursuant to existing procedures.

SEC. 7. (a) The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, or lease, for current market value or for any lesser consideration authorized by law and upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interests of the state, all or any part of the following real property:

Parcel 1. Single family residence located at 6511 Raymond Street, Oakland, Alameda County.

(b) The heirs of the previous owner of Parcel 1 of subdivision (a) shall have the first right of refusal to purchase this property at fair market value.

SEC. 8. Notwithstanding any other provision of law, including, but not limited to, Article 1 (commencing with Section 11000) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of, the Government Code, the Director of General Services, in consultation with the California Department of Forestry and Fire Protection, may convey, at no cost, except as provided in this section, to the Stirling City Historical Society for use with a public benefit, a portion of Stirling City Fire Fighting Station consisting of historical buildings no longer used by the Department of Forestry and Fire Protection on the terms and conditions and subject to the reservations and exceptions that may be in the best interest of the state. The Department of General Services shall be reimbursed by the Stirling City Historical Society only for its costs related to the transfer, including, but not limited to, any survey costs, title transfer fees, and department staff time.

SEC. 9. Notwithstanding any other provision of law, including, but not limited to, Article 1 (commencing with Section 11000) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Article 8 (commencing with

Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of, the Government Code, the Director of General Services, in consultation with the California Highway Patrol, may convey, at no cost, except as provided in this section, to the City of Williams for use with a public benefit, a 4,000 square foot office building, located at 806 North Street, Williams, Colusa County, no longer used by the California Highway Patrol on the terms and conditions and subject to the reservations and exceptions that may be in the best interest of the state. The Department of General Services shall be reimbursed by the City of Williams only for its costs related to the transfer, including, but not limited to, any survey costs, title transfer fees, and department staff time.

SEC. 10. (a) Notwithstanding any other provision of law, including, but not limited to, Article 1 (commencing with Section 11000) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, the Director of General Services, with the approval of the State Public Works Board, may exchange four irregularly shaped parcels of vacant land totaling approximately .61 acres near the intersection of Gough Street and Fulton Street in the City and County of San Francisco for one parcel of vacant land totaling approximately .32 acres owned by the City and County of San Francisco located on Golden Gate Avenue between Franklin Street and Gough Street.

(b) If the fair market value of the four state owned parcels totaling approximately .61 acres exceeds the market value of the approximately .32 acre parcel owned by the City and County of San Francisco, the value differential shall be deemed by both the city and county and the state as a subvention by the state augmenting the supply of affordable housing and facilitating the development of new state facilities in San Francisco.

SEC. 11. Section 4 of Chapter 870 of the Statutes of 1999 is amended to read:

Sec. 4. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, lease, or transfer for current market value only, all or any part of the following property:

Parcel 2. Approximately 6.64 acres, formerly the site of the Cohasset Forest Fire Station that was partially destroyed by fire on February 1, 1995, located at 405 Vilas Road, Cohasset, Butte County.

Parcel 3. Approximately 0.66 acre, with a structure formerly the site of the Lyons Valley Forest Fire Station, located at 17461 Lyons Valley Road, Jamul, San Diego County.

SEC. 12. Section 6 of Chapter 870 of the Statutes of 1999 is repealed.

SEC. 13. Section 12 of Chapter 784 of the Statutes of 1997 is amended to read:

Sec. 12. The Director of Parks and Recreation, with the approval of the State Public Works Board and the Director of General Services, may

sell or exchange for current market value, upon those terms and conditions and subject to those reservations and exceptions that may be in the best interest of the state, all or part of the following property:

Parcel 1. Approximately 0.32 acre of land at Carpinteria State Beach within the community of Mussell Shoals in Ventura County.

Parcel 2. Approximately 1,600 square feet of land located at the Skylandia Park portion of the Tahoe State Recreation Area near Tahoe City, Placer County.

Parcel 4. Approximately 1,900 square feet of land located at Morro Strand State Beach near Cayucos, in San Luis Obispo County.

Parcel 5. Approximately 1 acre of land at Sinkyone Wilderness State Park, near Shelter Cove, Mendocino County.

Parcel 6. Approximately 2.5 acres of open-space easement at the Bishop Peak portion of Morro Bay State Park, near the City of San Luis Obispo, San Luis Obispo County.

SEC. 14. Section 2 of Chapter 417 of the Statutes of 1996 is repealed.

SEC. 15. The authorization to sell, exchange, or lease the following properties is rescinded by this act, as the concerned state agencies have reported that the following properties are no longer considered surplus:

(a) Parcel 15 of subdivision (c) of Section 6 of Chapter 193 of the Statutes of 1996.

(b) Parcel 10 of subdivision (d) of Section 6 of Chapter 193 of the Statutes of 1996.

(c) Parcel 1 of Section 2 of Chapter 417 of the Statutes of 1996.

(d) Parcel 3 of Section 12 of Chapter 784 of the Statutes of 1997.

(e) Parcel 1 of Section 4 of Chapter 870 of the Statutes of 1999.

(f) Section 6 of Chapter 870 of the Statutes of 1999.

SEC. 16. (a) Notices of every public auction or bid opening shall be posted on the property to be sold under this act and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated.

(b) Any sale, exchange, lease, or transfer of the parcels described in this act is exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

SEC. 17. (a) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of any parcels.

(b) The net proceeds of any moneys received from the disposition of any parcels described in this act shall be deposited in the General Fund and be available for appropriation in accordance with Section 15863 of the Government Code.

SEC. 18. As to any property sold pursuant to this act consisting of 15 acres or less, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. As to property sold pursuant to this act consisting of more than 15 acres, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed that the director, after consultation with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

CHAPTER 611

An act to amend Section 62000.14 of the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 62000.14 of the Education Code is amended to read:

62000.14. (a) The California Indian Education Center Program shall sunset on January 1, 2007.

(b) (1) Each California Indian education center shall, as a condition of receipt of annual funding, collect and report site evaluation data that measure all of the following:

(A) The number of pupils served.

(B) The services provided to pupils.

(C) Academic performance of pupils served.

(D) The extent to which the program goals, as set forth in Article 6 (commencing with Section 33380) of Chapter 3 of Part 20, are being met.

(2) In addition, each center shall submit an evaluation of its program to the State Department of Education on or before July 1, 2005, and shall supply whatever information is deemed necessary for the purposes of the evaluation.

(3) The State Department of Education shall report the consolidated results of the yearly evaluation data and self reviews, as well as

recommendations for program improvement, to the Legislature on or before January 1, 2006.

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 extend the California Indian Education Center Program before it sunsets, it is necessary that this act take effect immediately.

CHAPTER 612

An act to add and repeal Article 6.5 (commencing with Section 65053.5) of Chapter 1.5 of Division 1 of Title 7 of the Government Code, relating to military bases.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Article 6.5 (commencing with Section 65053.5) is added to Chapter 1.5 of Division 1 of Title 7 of the Government Code, to read:

Article 6.5. Single Local Retention Entities

65053.5. (a) As used in this article, the following terms have the following meaning:

(1) ''Military base'' means a military installation or subinstallation in California, as defined by regulations of the Departments of Defense and the Army, Navy, Air Force, and Marines.

(2) ''Affected local entity'' means any county or city located wholly or partly within the boundaries of a military base or having a sphere of influence over any portion of the base with responsibility for local zoning and planning decisions.

(b) The Legislature hereby finds and declares both of the following:

(1) Because of the tremendous economic impact that military bases and Department of Defense facilities have on the state, it is in the best interest of the state to facilitate their retention.

(2) It is the intent of the Legislature to encourage cooperation between affected local entities in efforts to retain military bases in this state. It is also the intent of the Legislature to authorize affected local entities to enter into partnerships to engage in base retention activities

by authorizing the creation of a joint powers authority pursuant to this section.

(c) For the purposes of this article, a single local base retention entity shall be recognized for each military base in this state.

(d) A list of entities or their successors, including, but not limited to, separate airport or port authorities recognized as the single local retention entity for the military bases, shall be maintained by the California Defense Retention and Conversion Council. Affected counties and cities may also establish, by resolution, a joint powers authority for the purposes of this article pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, if a single local retention entity cannot otherwise be identified or established.

(e) The state shall recognize a single local retention entity for each active military base if resolutions acknowledging the entity as the single local base retention entity are adopted by the affected county boards of supervisors and the city council of each city located wholly or partly within the boundaries of the base or having a sphere of influence over any portion of the base and are forwarded to the California Defense Retention and Conversion Council, created pursuant to Article 3.6 (commencing with Section 15346) of Chapter 1 of Part 6.7 of Division 3 of Title 2 on or before July 1, 2002. If prior to January 1, 2002, a local entity was awarded grant moneys pursuant to Section 15346.10 for a specific military installation, the recipient entity shall be recognized by the state as the single local base retention entity unless resolutions acknowledging a separate entity are adopted by the affected county board of supervisors and the city council of each city located wholly or partly within the boundaries of the base or having a sphere of influence over any portion of the base and are forwarded to the California Defense Retention and Conversion Council.

(f) If the necessary resolutions are not adopted within the time limit specified in subdivision (e), the California Defense Retention and Conversion Council shall appoint a neutral person or persons, with experience in local land use issues, as a mediator to facilitate communication between the disputants and assist them in reaching a mutually acceptable agreement.

(g) If the necessary resolutions are not adopted within the time limit specified in subdivision (e), the California Defense Retention and Conversion Council, as a last resort, and only if no recognition of a single local base retention entity is made pursuant to subdivision (f), shall hold public hearings and recognize a single local base retention entity for each military base or recommend legislation or action by the local agency formation commission if necessary to implement a proposed recognition.

65053.6. The single local base retention authority shall be recognized by all state agencies as the single base retention planning authority for the base. The state shall encourage the federal government and other local jurisdictions to recognize similarly the authorities designated pursuant to Section 65053.5 for the purposes of retention activities.

65053.7. This article shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

CHAPTER 613

An act to amend Sections 63.1, 69.5, 532, and 606 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 7, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 63.1 of the Revenue and Taxation Code is amended to read:

63.1. (a) Notwithstanding any other provision of this chapter, a change in ownership shall not include the following purchases or transfers for which a claim is filed pursuant to this section:

(1) The purchase or transfer of real property which is the principal residence of an eligible transferor in the case of a purchase or transfer between parents and their children.

(2) The purchase or transfer of the first one million dollars ($1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children.

(3) (A) Subject to subparagraph (B), the purchase or transfer of real property described in paragraphs (1) and (2) of subdivision (a) occurring on or after March 27, 1996, between grandparents and their grandchild or grandchildren, 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 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) of subdivision (a). 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 (2) of subdivision (a) 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 paragraph (2) of subdivision (a), the one million dollar ($1,000,000) full cash value limit specified in paragraph (2) of subdivision (a).

(b) (1) For purposes of paragraph (1) of subdivision (a), ''principal residence'' means a dwelling for which a homeowners' exemption or a disabled veterans' residence exemption has been granted in the name of the eligible transferor. ''Principal residence'' includes only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence.

(2) For purposes of paragraph (2) of subdivision (a), the one million dollar ($1,000,000) exclusion shall apply separately to each eligible transferor with respect to all purchases by and transfers to eligible transferees on and after November 6, 1986, of real property, other than the principal residence, of that eligible transferor. The exclusion shall not apply to any property in which the eligible transferor's interest was received through a transfer, or transfers, excluded from change in ownership by the provisions of either subdivision (f) of Section 62 or subdivision (b) of Section 65, unless the transferor qualifies as an original transferor under subdivision (b) of Section 65. In the case of any purchase or transfer subject to this paragraph involving two or more eligible transferors, the transferors may elect to combine their separate one million dollar ($1,000,000) exclusions and, upon making that election, the combined amount of their separate exclusions shall apply to any property jointly sold or transferred by the electing transferors, provided that in no case shall the amount of full cash value of real property of any one eligible transferor excluded under this election exceed the amount of the transferor's separate unused exclusion on the date of the joint sale or transfer.

(c) As used in this section:

(1) ''Purchase or transfer between parents and their children'' means either a transfer from a parent or parents to a child or children of the parent or parents or a transfer from a child or children to a parent or parents of the child or children. For purposes of this section, the date of any transfer between parents and their children under a will or intestate succession shall be the date of the decedent's death, if the decedent died on or after November 6, 1986.

(2) ''Purchase or transfer of real property between grandparents and their grandchild or grandchildren'' means a purchase or transfer on or after March 27, 1996, from a grandparent or grandparents to a grandchild or grandchildren 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 transfer. For purposes of this section, the date of any transfer between grandparents and their grandchildren under a will or by intestate succession shall be the date of the decedent's death.

(3) ''Children'' means any of the following:

(A) Any child born of the parent or parents, except a child, as defined in subparagraph (D), who has been adopted by another person or persons.

(B) Any stepchild of the parent or parents and the spouse of that stepchild while the relationship of stepparent and stepchild exists. For purposes of this paragraph, the relationship of stepparent and stepchild shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving stepparent.

(C) Any son-in-law or daughter-in-law of the parent or parents. For the purposes of this paragraph, the relationship of parent and son-in-law or daughter-in-law shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce or, if the relationship is terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law.

(D) Any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years.

(4) ''Grandchild'' or ''grandchildren'' means any child or children of the child or children of the grandparent or grandparents.

(5) ''Full cash value'' means full cash value, as defined in Section 2 of Article XIII A of the California Constitution and Section 110.1, with any adjustments authorized by those sections, and the full value of any new construction in progress, determined as of the date immediately prior to the date of a purchase by or transfer to an eligible transferee of real property subject to this section.

(6) ''Eligible transferor'' means a grandparent, parent, or child of an eligible transferee.

(7) ''Eligible transferee'' means a parent, child, or grandchild of an eligible transferor.

(8) ''Real property'' means real property as defined in Section 104. Real property does not include any interest in a legal entity.

(9) ''Transfer'' includes, and is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust.

(10) ''Social security number'' also includes a taxpayer identification number issued by the Internal Revenue Service in the case in which the taxpayer is a foreign national who cannot obtain a social security number.

(d) (1) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate files a claim with the assessor for the exclusion sought and furnishes to the assessor each of the following:

(A) A written certification by the transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate, signed and made under penalty of perjury that the transferee is a grandparent, parent, child, or grandchild of the transferor and that the transferor is his or her parent, child, or grandparent. In the case of a grandparent-grandchild transfer, the written certification shall also include a certification that all the parents of the grandchild or grandchildren who qualify as children of the grandparents were deceased as of the date of the purchase or transfer and that the grandchild or grandchildren did or did not receive a principal residence excludable under paragraph (1) of subdivision (a) from the deceased parents, and that the grandchild or grandchildren did or did not receive real property other than a principal residence excludable under paragraph (2) of subdivision (a) from the deceased parents. The claimant shall provide legal substantiation of any matter certified pursuant to this subparagraph at the request of the county assessor.

(B) A written certification shall also include either or both of the following:

(i) If the purchase or transfer of real property includes the purchase or transfer of residential real property, a certification that the residential real property is or is not the transferor's principal residence.

(ii) If the purchase or transfer of real property includes the purchase or transfer of real property other than the transferor's principal residence, a certification that other real property of the transferor that is subject to this section has or has not been previously sold or transferred to an eligible transferee, the total amount of full cash value, as defined in subdivision (c), of any real property subject to this section that has been previously sold or transferred by that transferor to eligible transferees, the location of that real property, the social security number of each eligible transferor, and the names of the eligible transferees of that property.

(C) If there are multiple transferees, the certification and signature may be made by any one of the transferees, if both of the following conditions are met:

(i) The transferee has actual knowledge that, and the certification signed by the transferee states that, all of the transferees are eligible transferees within the meaning of this section.

(ii) The certification is signed by the transferee as a true statement made under penalty of perjury.

(2) If the full cash value of the real property purchased by or transferred to the transferee exceeds the permissible exclusion of the transferor or the combined permissible exclusion of the transferors, in the case of a purchase or transfer from two or more joint transferors, taking into account any previous purchases by or transfers to an eligible transferee from the same transferor or transferors, the transferee shall specify in his or her claim the amount and the allocation of the exclusion he or she is seeking. Within any appraisal unit, as determined in accordance with subdivision (d) of Section 51 by the assessor of the county in which the real property is located, the exclusion shall be applied only on a pro rata basis, however, and shall not be applied to a selected portion or portions of the appraisal unit.

(e) (1) The State Board of Equalization shall design the form for claiming eligibility. Except as provided in paragraph (2), any claim under this section shall be filed:

(A) For transfers of real property between parents and their children occurring prior to September 30, 1990, within three years after the date of the purchase or transfer of real property for which the claim is filed.

(B) For transfers of real property between parents and their children occurring on or after September 30, 1990, and for the purchase or transfer of real property between grandparents and their grandchildren occurring on or after March 27, 1996, within three years after the date of the purchase or transfer of real property for which the claim is filed, or prior to transfer of the real property to a third party, whichever is earlier.

(C) Notwithstanding subparagraphs (A) and (B), a claim shall be deemed to be timely filed if it is filed within six months after the date of mailing of a notice of supplemental or escape assessment, issued as a result of the purchase or transfer of real property for which the claim is filed.

(2) In the case in which the real property subject to purchase or transfer has not been transferred to a third party, a claim for exclusion under this section that is filed subsequent to the expiration of the filing periods set forth in paragraph (1) shall be considered by the assessor, subject to all of the following conditions:

(A) Any exclusion granted pursuant to that claim shall apply commencing with the lien date of the assessment year in which the claim is filed.

(B) Under any exclusion granted pursuant to that claim, the adjusted full cash value of the subject real property in the assessment year described in subparagraph (A) shall be the adjusted base year value of the subject real property in the assessment year in which the excluded purchase or transfer took place, factored to the assessment year described in subparagraph (A) for both of the following:

(i) Inflation as annually determined in accordance with paragraph (1) of subdivision (a) of Section 51.

(ii) Any subsequent new construction occurring with respect to the subject real property.

(3) (A) Unless otherwise expressly provided, the provisions of this subdivision shall apply to any purchase or transfer of real property that occurred on or after November 6, 1986.

(B) Paragraph (2) shall apply to purchases or transfers between parents and their children that occurred on or after November 6, 1986, and to purchases or transfers between grandparents and their grandchildren that occurred on or after March 27, 1996.

(4) For purposes of this subdivision, a transfer of real property to a parent or child of the transferor shall not be considered a transfer to a third party.

(f) The assessor shall report quarterly to the State Board of Equalization all purchases or transfers, other than purchases or transfers involving a principal residence, for which a claim for exclusion is made pursuant to subdivision (d). Each report shall contain the assessor's parcel number for each parcel for which the exclusion is claimed, the amount of each exclusion claimed, the social security number of each eligible transferor, and any other information the board shall require in order to monitor the one million dollar ($1,000,000) limitation in paragraph (2) of subdivision (a).

(g) This section shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree. Nothing in this subdivision shall be construed as conflicting with paragraph (1) of subdivision (c) or the general principle that transfers by reason of death occur at the time of death.

(h) (1) Except as provided in paragraph (2), this section shall apply to purchases and transfers of real property completed on or after November 6, 1986, and shall not be effective for any change in ownership, including a change in ownership arising on the date of a decedent's death, that occurred prior to that date.

(2) This section shall apply to purchases or transfers of real property between grandparents and their grandchildren occurring on or after March 27, 1996, and, with respect to purchases or transfers of real property between grandparents and their grandchildren, shall not be effective for any change in ownership, including a change in ownership arising on the date of a decedent's death, that occurred prior to that date.

SEC. 2. Section 69.5 of the Revenue and Taxation Code is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and

permanently disabled person, who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base year value of that property to any replacement dwelling of equal or lesser value that is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with all of the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base year value.

(D) It provides that its provisions are operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale, or at the time when the original property was substantially damaged or destroyed by misfortune or calamity, or within

two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale, or at the time when the original property was substantially damaged or destroyed by misfortune or calamity, or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and that, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated that is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section, except that this paragraph shall not apply to any person who becomes severely and permanently disabled subsequent to being granted, as a claimant, the property tax relief provided by this section for any person over the age of 55 years. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or

other media and in a format that is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base year value of the mobilehome or the base year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base year value shall be made by the assessor of that portion of land that does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base year value shall be made by the assessor to that portion of land that does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership that either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base year value determined in accordance with this section, Section 69, or Section 69.3 because the property qualifies under this section, Section 69, or Section 69.3 as a replacement dwelling or property.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form that the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age, or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the

case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty that identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed subject to subdivision (k).

(g) For purposes of this section:

(1) ''Person over the age of 55 years'' means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) ''Base year value of the original property'' means its base year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant, or in the case where the original property has been substantially damaged or destroyed by misfortune or

calamity and the owner does not rebuild on the original property, determined as of the date immediately prior to the misfortune or calamity.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, ''base year value of the original property'' also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the ''base year value of the original property'' shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

(3) ''Replacement dwelling'' means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size that is used as a site for a residence, and ''land owned by the claimant'' includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling. For purposes of this paragraph, ''area of reasonable size that is used as a site for a residence'' includes all land if any nonresidential uses of the property are only incidental to the use of the property as a residential site.

(4) ''Original property'' means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size that is used as a site for a residence, and ''land owned by the claimant'' includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property. For purposes of this paragraph, ''area of reasonable size that is used as a site for a residence'' includes all land if any nonresidential uses of the property are only incidental to the use of the property as a residential site.

(5) ''Equal or lesser value'' means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the ''replacement dwelling is purchased or newly constructed'' is the date of purchase or the date of completion of construction, whichever is later.

(6) ''Full cash value of the replacement dwelling'' means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) ''Full cash value of the original property'' means, either:

(A) Its new base year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(B) In the case where the original property has been substantially damaged or destroyed by misfortune or calamity and the owner does not rebuild on the original property, its full cash value, as determined in accordance with Section 110, immediately prior to its substantial damage or destruction by misfortune or calamity, as determined by the county assessor of the county in which the property is located, without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1, for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) ''Sale'' means any change in ownership of the original property for consideration.

(9) ''Claimant'' means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse is also a claimant for purposes of determining whether in any future claim filed by the spouse under this

section the condition of eligibility specified in paragraph (7) of subdivision (b) has been met.

(10) ''Property that is eligible for the homeowner's exemption'' includes property that is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) ''Person'' means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(12) ''Severely and permanently disabled'' means any person described in subdivision (b) of Section 74.3.

(13) For the purposes of this section property is ''substantially damaged or destroyed by misfortune or calamity'' if it sustains physical damage amounting to more than 50 percent of is full cash value immediately prior to the misfortune or calamity. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the misfortune or calamity and is permanent in nature.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes that were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount that would be due when determined on the basis of the adjusted new base year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in

writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), and the assessor shall grant the rescission, if a written notice of rescission is delivered to the office of the assessor as follows:

(1) A written notice of rescission signed by the original filing claimant or claimants is delivered to the office of the assessor in which the original claim was filed.

(2) (A) Except as otherwise provided in this paragraph, the notice of rescission is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(B) Notwithstanding any other provision in this division, any time the notice of rescission is delivered to the office of the assessor within six years after relief was granted, provided that the replacement property has been vacated as the claimant's principal place of residence within 90 days after the original claim was filed, regardless of whether the property continues to receive the homeowner's exemption. If the rescission increases the base year value of a property, or the homeowners' exemption has been incorrectly allowed, appropriate escape assessments or supplemental assessments, including interest as provided in Section 506, shall be imposed. The limitations periods for any escape assessments or supplemental assessments shall not commence until July 1 of the assessment year in which the notice of rescission is delivered to the office of the assessor.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including

both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) With respect to the transfer of base year value of original properties to replacement dwellings located in the same county, this section, except as provided in paragraph (3) or (4), shall apply to any replacement dwelling that is purchased or newly constructed on or after November 6, 1986.

(2) With respect to the transfer of base year value of original properties to replacement dwellings located in different counties, except as provided in paragraph (4), this section shall apply to any replacement dwelling that is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(3) With respect to the transfer of base year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings that are purchased or newly constructed on or after June 6, 1990.

(4) The amendments made to subdivision (e) by the act adding this paragraph shall apply only to replacement dwellings under Section 69 that are acquired or newly constructed on or after October 20, 1991, and shall apply commencing with the 1991–92 fiscal year.

(k) (1) In the case in which a county adopts an ordinance pursuant to paragraph (2) of subdivision (a) that establishes an applicable date which is more than three years prior to the date of adoption of the ordinance, those potential claimants who purchased or constructed replacement dwellings more than three years prior to the date of adoption of the ordinance and who would, therefore, be precluded from filing a timely claim, shall be deemed to have timely filed a claim if the claim is filed within three years after the date that the ordinance is adopted. This paragraph may not be construed as a waiver of any other requirement of this section.

(2) This subdivision does not apply to a claimant who has transferred his or her replacement dwelling prior to filing a claim.

(3) The property tax relief provided by this section, but filed under this subdivision, shall apply prospectively only, commencing with the lien date of the assessment year in which the claim is filed. There shall be no refund or cancellation of taxes prior to the date that the claim is filed.

(*l*) No escape assessment may be levied if a transfer of base year value under this section has been erroneously granted by the assessor pursuant to an expired ordinance authorizing intercounty transfers of base year value.

(m) The amendments made to subdivisions (b) and (g) of this section by the act adding this subdivision apply only to replacement dwellings that are acquired or newly constructed on or after March 24, 1999, and shall apply commencing with the 1998–99 fiscal year. The property tax relief provided by this section, but filed under this subdivision, shall apply prospectively only, commencing with the lien date of the assessment year in which the claim is filed. There shall be no refund or cancellation of taxes prior to the date that the claim is filed.

SEC. 3. Section 532 of the Revenue and Taxation Code is amended to read:

532. (a) Except as provided in subdivision (b), any assessment made pursuant to either Article 3 (commencing with Section 501) or this article shall be made within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed.

(b) (1) Any assessment to which the penalty provided for in Section 504 must be added shall be made within eight years after July 1 of the assessment year in which the property escaped taxation or was underassessed.

(2) Any assessment resulting from an unrecorded change in ownership or change in control for which either a change in ownership statement, as required by Section 480 or a preliminary change in ownership report, as required by Section 480.3, is not filed with respect to the event giving rise to the escape assessment or underassessment shall be made within eight years after July 1 of the assessment year in which the property escaped taxation or was underassessed. For purposes of this paragraph, an ''unrecorded change in ownership or change in control'' means a deed or other document evidencing a change in ownership that was not filed with the county recorder's office at the time the event took place.

(3) Notwithstanding paragraphs (1) and (2), in the case where property has escaped taxation, in whole or in part, or has been underassessed, following a change in ownership or change in control and either the penalty provided for in Section 503 must be added or a change in ownership statement, as required by Section 480.1 or 480.2 was not filed with respect to the event giving rise to the escape assessment or underassessment, an escape assessment shall be made for each year in which the property escaped taxation or was underassessed.

(c) For purposes of this section, ''assessment year'' means the period defined in Section 118.

SEC. 4. Section 606 of the Revenue and Taxation Code is amended to read:

606. (a) Except as provided in subdivisions (b) and (c), when any tract of land is situated in two or more revenue districts, the part in each district shall be separately assessed.

(b) Where the owner of two or more contiguous parcels comprising the tract is identical, and the full value of any parcel is less than twenty-five thousand dollars ($25,000), that parcel may be combined with the contiguous parcel with the greatest assessed valuation.

(c) Where the owner of two or more contiguous parcels comprising the tract is identical, and the tract of land is being used for a single-family residence and constitutes 45,000 square feet or less, the smallest parcel may be combined with the largest contiguous parcel.

SEC. 5. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC. 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.

CHAPTER 614

An act to amend Sections 805, 805.1, 805.5, 806, and 2313 of, and to add Sections 805.2, 805.6, and 805.7 to, the Business and Professions Code, relating to peer review.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Peer review is an essential component of the regulation by certain licensing agencies of the quality of health care practice in this state and of the health care community's responsibility to engage in active self-regulation of the quality of health care services provided to Californians. Because licensed health care practitioners and the administrators of the facilities within which these licentiates practice are in the best position to observe the quality of health care services being provided to the public, it is appropriate for licentiates to participate in early intervention and quality improvement review of their peers. To this

end, it is important for a maximum level of cooperation to exist between the relevant licensing agencies and peer review bodies.

(b) To the extent possible, and consistent with the primary duty to protect the public, licensing agencies shall attempt to investigate information derived from reports filed pursuant to Section 805 of the Business and Professions Code in a manner that is not disruptive of a patient's privacy or a licentiate's practice. Specifically, unless an investigation warrants a greater intrusion into a particular identifiable patient's medical information, a licensing agency shall attempt to conduct initial reviews by using redacted records and other sources of information. However, nothing in this act shall be construed to narrow, qualify, or overrule the authority of a licensing agency to obtain access to patient information if it is necessary in order to completely and accurately investigate a report concerning its licentiates.

SEC. 2. Section 805 of the Business and Professions Code is amended to read:

805. (a) As used in this section, the following terms have the following definitions:

(1) ''Peer review body'' includes:

(A) A medical or professional staff of any health care facility or clinic licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare program as an ambulatory surgical center.

(B) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that contracts with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code.

(C) Any medical, psychological, marriage and family therapy, social work, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

(D) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class that functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) ''Licentiate'' means a physician and surgeon, podiatrist, clinical psychologist, marriage and family therapist, clinical social worker, or dentist. ''Licentiate'' also includes a person authorized to practice medicine pursuant to Section 2113.

(3) ''Agency'' means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) ''Staff privileges'' means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) ''Denial or termination of staff privileges, membership, or employment'' includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, if the action is based on medical disciplinary cause or reason.

(6) ''Medical disciplinary cause or reason'' means that aspect of a licentiate's competence or professional conduct which is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) ''805 report'' means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after the effective date of any of the following which take place as a result of an action of a peer review body:

(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

(c) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after any of the following takes place after notice of either an investigation or the impending denial or rejection of the application for a medical disciplinary cause or reason:

(1) Resignation or leave of absence from membership, staff, or employment.

(2) The withdrawal or abandonment of a licentiate's application for staff privileges or membership.

(3) The request for renewal of those privileges or membership is withdrawn or abandoned.

(d) For purposes of filing an 805 report, the signature of at least one of the individuals indicated in subdivision (b) or (c) on the completed form shall constitute compliance with the requirement to file the report.

(e) An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

(f) A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report.

The information to be reported in an 805 report shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

If another peer review body is required to file an 805 report, a health care service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason. If the Medical Board of California or a licensing agency of another state revokes or suspends, without a stay, the license of a physician, a peer review body is not required to file an 805 report when it takes an action as a result of the revocation or suspension.

(g) The reporting required herein shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976.

(h) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall disclose reports as required by Section 805.5.

(i) An 805 report shall be maintained by an agency for dissemination purposes for a period of three years after receipt.

(j) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(k) A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is

punishable by a fine not to exceed one hundred thousand dollars ($100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licentiate. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, ''willful'' means a voluntary and intentional violation of a known legal duty.

(*l*) Except as otherwise provided in subdivision (k), any failure by the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report, shall be punishable by a fine that under no circumstances shall exceed fifty thousand dollars ($50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars ($50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

(m) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis,

licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

SEC. 3. Section 805.1 of the Business and Professions Code is amended to read:

805.1. (a) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall be entitled to inspect and copy the following documents in the record of any disciplinary proceeding resulting in action that is required to be reported pursuant to Section 805:

(1) Any statement of charges.

(2) Any document, medical chart, or exhibits in evidence.

(3) Any opinion, findings, or conclusions.

(b) The information so disclosed shall be kept confidential and not subject to discovery, in accordance with Section 800, except that it may be reviewed, as provided in subdivision (c) of Section 800, and may be disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 4. Section 805.2 is added to the Business and Professions Code, to read:

805.2. (a) It is the intent of the Legislature to provide for a comprehensive study of the peer review process as it is conducted by peer review bodies defined in paragraph (1) of subdivision (a) of Section 805, in order to evaluate the continuing validity of Section 805 and Sections 809 to 809.8, inclusive, and their relevance to the conduct of peer review in California. The Medical Board of California shall contract with the Institute for Medical Quality to conduct this study, which shall include, but not be limited to, the following components:

(1) A comprehensive description of the various steps of and decisionmakers in the peer review process as it is conducted by peer review bodies throughout the state, including the role of other related committees of acute care health facilities and clinics involved in the peer review process.

(2) A survey of peer review cases to determine the incidence of peer review by peer review bodies, and whether they are complying with the reporting requirement in Section 805.

(3) A description and evaluation of the roles and performance of various state agencies, including the State Department of Health Services and occupational licensing agencies that regulate healing arts professionals, in receiving, reviewing, investigating, and disclosing peer review actions, and in sanctioning peer review bodies for failure to comply with Section 805.

(4) An assessment of the cost of peer review to licentiates and the facilities which employ them.

(5) An assessment of the time consumed by the average peer review proceeding, including the hearing provided pursuant to Section 809.2, and a description of any difficulties encountered by either licentiates or facilities in assembling peer review bodies or panels to participate in peer review decisionmaking.

(6) An assessment of the need to amend Section 805 and Sections 809 to 809.8, inclusive, to ensure that they continue to be relevant to the actual conduct of peer review as described in paragraph (1), and to evaluate whether the current reporting requirement is yielding timely and accurate information to aid licensing boards in their responsibility to regulate and discipline healing arts practitioners when necessary, and to assure that peer review bodies function in the best interest of patient care.

(7) Recommendations of additional mechanisms to stimulate the appropriate reporting of peer review actions under Section 805.

(8) Recommendations regarding the Section 809 hearing process to improve its overall effectiveness and efficiency.

(b) The Institute of Medical Quality shall exercise no authority over the peer review processes of peer review bodies. However, peer review bodies, health care facilities, health care clinics, and health care service plans shall cooperate with the institute and provide data, information, and case files as requested in the timeframe specified by the institute.

(c) The institute shall work in cooperation with and under the general oversight of the Medical Director of the Medical Board of California and shall submit a written report with its findings and recommendations to the board and the Legislature no later than November 1, 2002.

SEC. 5. Section 805.5 of the Business and Professions Code is amended to read:

805.5. (a) Prior to granting or renewing staff privileges for any physician and surgeon, psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or any health care service plan or medical care foundation, or the medical staff of the institution shall request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon, psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff, which is received on or after January 1, 1980, the board shall furnish a copy of any report made pursuant to Section 805. However, the board shall not send a copy of a report (1) if the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) if the board has found the information reported is without merit, or (3) if a period of three years has elapsed since the report was submitted. This three-year period shall be tolled during any period the licentiate has obtained a judicial order precluding disclosure of the report, unless the board is finally and permanently precluded by judicial order from disclosing the report. In the event a request is received by the board while the board is subject to a judicial order limiting or precluding disclosure, the board shall provide a disclosure to any qualified requesting party as soon as practicable after the judicial order is no longer in force.

In the event that the board fails to advise the institution within 30 working days following its request for a report required by this section, the institution may grant or renew staff privileges for the physician and surgeon, psychologist, podiatrist, or dentist.

(c) Any institution described in subdivision (a) or its medical staff that violates subdivision (a) is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200).

SEC. 6. Section 805.6 is added to the Business and Professions Code, to read:

805.6. (a) The Medical Board of California, the Osteopathic Medical Board, and the Dental Board of California shall establish a system of electronic notification that is either initiated by the board or can be accessed by qualified subscribers, and that is designed to achieve early notification to qualified recipients of the existence of new reports that are filed pursuant to Section 805.

(b) The State Department of Health Services shall notify the appropriate licensing agency of any reporting violations pursuant to Section 805.

(c) The Department of Managed Health Care shall notify the appropriate licensing agency of any reporting violations pursuant to Section 805.

SEC. 7. Section 805.7 is added to the Business and Professions Code, to read:

805.7. (a) The Medical Board of California shall work with interested parties in the pursuit and establishment of a pilot program, similar to those proposed by the Citizens Advocacy Center, of early detection of potential quality problems and resolutions through informal educational interventions.

(b) The Medical Board of California shall report to the Legislature its evaluation and findings and shall include recommendations regarding the statewide implementation of this pilot program before April 1, 2003.

SEC. 8. Section 806 of the Business and Professions Code is amended to read:

806. Each agency in the department receiving reports pursuant to the preceding sections shall prepare a statistical report based upon these records for presentation to the Legislature not later than 30 days after the commencement of each regular session of the Legislature, including by the type of peer review body, and, where applicable, type of health care facility, the number of reports received and a summary of administrative and disciplinary action taken with respect to these reports and any recommendations for corrective legislation if the agency considers legislation to be necessary.

SEC. 9. Section 2313 of the Business and Professions Code is amended to read:

2313. The Division of Medical Quality shall report annually to the Legislature, no later than October 1 of each year, the following information:

(a) The total number of temporary restraining orders or interim suspension orders sought by the board or the division to enjoin licensees pursuant to Sections 125.7, 125.8 and 2311, the circumstances in each case that prompted the board or division to seek that injunctive relief, and whether a restraining order or interim suspension order was actually issued.

(b) The total number and types of actions for unprofessional conduct taken by the board or a division against licensees, the number and types of actions taken against licensees for unprofessional conduct related to prescribing drugs, narcotics, or other controlled substances, including those related to the undertreatment or undermedication of pain.

(c) Information relative to the performance of the division, including the following: number of consumer calls received; number of consumer calls or letters designated as discipline-related complaints; number of calls resulting in complaint forms being sent to complainants and number of forms returned; number of Section 805 reports by type; number of Section 801 and Section 803 reports; coroner reports received; number of convictions reported to the division; number of criminal filings reported to the division; number of complaints and referrals closed, referred out, or resolved without discipline, respectively, prior to accusation; number of accusations filed and final disposition of accusations through the division and court review, respectively; final physician discipline by category; number of citations issued with fines and without fines, and number of public reprimands issued; number of cases in process more than six months from receipt by

the division of information concerning the relevant acts to the filing of an accusation; average and median time in processing complaints from original receipt of complaint by the division for all cases at each stage of discipline and court review, respectively; number of persons in diversion, and number successfully completing diversion programs and failing to do so, respectively; probation violation reports and probation revocation filings and dispositions; number of petitions for reinstatement and their dispositions; and caseloads of investigators for original cases and for probation cases, respectively.

''Action,'' for purposes of this section, includes proceedings brought by, or on behalf of, the division against licensees for unprofessional conduct which have not been finally adjudicated, as well as disciplinary actions taken against licensees.

(d) The total number of reports received pursuant to Section 805 by the type of peer review body reporting and, where applicable, the type of health care facility involved and the total number and type of administrative or disciplinary actions taken by the Medical Board of California with respect to the reports.

CHAPTER 615

An act to amend Sections 101, 3750.51, 6704.1, 7011, 7092, and 8027 of, to add Sections 805.2, 1620.1, 8011, and 8027.5 to, to add and repeal Section 1601.3 of, and to repeal and add Section 2475 of, the Business and Professions Code, relating to professions and vocations, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of:

(a) The Dental Board of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Veterinary Medical Board.

(f) The California Board of Accountancy.

(g) The California Architects Board.

(h) The Bureau of Barbering and Cosmetology.
(i) The Board for Professional Engineers and Land Surveyors.
(j) The Contractors' State License Board.
(k) The Bureau for Private Postsecondary and Vocational Education.
(*l*) The Structural Pest Control Board.
(m) The Bureau of Home Furnishings and Thermal Insulation.
(n) The Board of Registered Nursing.
(o) The Board of Behavioral Sciences.
(p) The State Athletic Commission.
(q) The Cemetery and Funeral Bureau.
(r) The State Board of Guide Dogs for the Blind.
(s) The Bureau of Security and Investigative Services.
(t) The Court Reporters Board of California.
(u) The Board of Vocational Nursing and Psychiatric Technicians.
(v) The Landscape Architects Technical Committee.
(w) The Bureau of Electronic and Appliance Repair.
(x) The Division of Investigation.
(y) The Bureau of Automotive Repair.
(z) The State Board of Registration for Geologists and Geophysicists.
(aa) The Respiratory Care Board of California.
(ab) The Acupuncture Board.
(ac) The Board of Psychology.
(ad) The California Board of Podiatric Medicine.
(ae) The Physical Therapy Board of California.
(af) The Arbitration Review Program.
(ag) The Committee on Dental Auxiliaries.
(ah) The Hearing Aid Dispensers Bureau.
(ai) The Physician Assistant Committee.
(aj) The Speech-Language Pathology and Audiology Board.
(ak) The California Board of Occupational Therapy.
(a*l*) The Osteopathic Medical Board of California.
(am) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 2. Section 805.2 is added to the Business and Professions Code, to read:

805.2. (a) It is the intent of the Legislature to provide for a comprehensive study of the peer review process as it is conducted by peer review bodies defined in paragraph (1) of subdivision (a) of Section 805, in order to evaluate the continuing validity of Section 805 and Sections 809 to 809.8, inclusive, and their relevance to the conduct of peer review in California. The Medical Board of California shall contract with the Institute for Medical Quality to conduct this study, which shall include, but not be limited to, the following components:

(1) A comprehensive description of the various steps of and decisionmakers in the peer review process as it is conducted by peer review bodies throughout the state, including the role of other related committees of acute care health facilities and clinics involved in the peer review process.

(2) A survey of peer review cases to determine the incidence of peer review by peer review bodies, and whether they are complying with the reporting requirement in Section 805.

(3) A description and evaluation of the roles and performance of various state agencies, including the State Department of Health Services and occupational licensing agencies that regulate healing arts professionals, in receiving, reviewing, investigating, and disclosing peer review actions, and in sanctioning peer review bodies for failure to comply with Section 805.

(4) An assessment of the cost of peer review to licentiates and the facilities which employ them.

(5) An assessment of the time consumed by the average peer review proceeding, including the hearing provided pursuant to Section 809.2, and a description of any difficulties encountered by either licentiates or facilities in assembling peer review bodies or panels to participate in peer review decisionmaking.

(6) An assessment of the need to amend Section 805 and Sections 809 to 809.8, inclusive, to ensure that they continue to be relevant to the actual conduct of peer review as described in paragraph (1), and to evaluate whether the current reporting requirement is yielding timely and accurate information to aid licensing boards in their responsibility to regulate and discipline healing arts practitioners when necessary, and to assure that peer review bodies function in the best interest of patient care.

(7) Recommendations of additional mechanisms to stimulate the appropriate reporting of peer review actions under Section 805.

(8) Recommendations regarding the Section 809 hearing process to improve its overall effectiveness and efficiency.

(b) The Institute of Medical Quality shall exercise no authority over the peer review processes of peer review bodies. However, peer review bodies, health care facilities, health care clinics, and health care service plans shall cooperate with the institute and provide data, information, and case files as requested in the timeframes specified by the institute.

(c) The institute shall work in cooperation with and under the general oversight of the Medical Director of the Medical Board of California and shall submit a written report with its findings and recommendations to the board and the Legislature no later than November 1, 2002.

SEC. 3. Section 1601.3 is added to the Business and Professions Code, to read:

1601.3. (a) (1) The Director of Consumer Affairs shall appoint a dental board enforcement program monitor no later than March 31, 2002. The director may retain a person for this position by a personal services contract, the Legislature hereby finding, pursuant to Section 19130 of the Government Code, that this is a new state function.

(2) The director shall supervise the enforcement program monitor and may terminate or dismiss him or her from this position.

(b) (1) The enforcement program monitor shall monitor and evaluate the dental disciplinary system and procedures, with specific concentration on improving the overall efficiency of the enforcement program. The director shall specify further duties of the program monitor.

(2) The monitoring duty shall be on a continuing basis for a period of no more than two years from the date of the enforcement program monitor's appointment and shall include, but not be limited to, improving the quality and consistency of complaint processing and investigation and reducing the timeperiods for each, reducing any complaint backlog, assuring consistency in the application of sanctions or discipline imposed on licensees, and shall include the following areas: the accurate and consistent implementation of the laws and rules affecting discipline, staff concerns regarding disciplinary matters or procedures, appropriate utilization of licensed professionals to investigate complaints, the board's cooperation with other governmental entities charged with enforcing related laws and regulations regarding dentists.

(3) The enforcement program monitor shall exercise no authority over the board's discipline operations or staff. However, the board and its staff shall cooperate with him or her, and the board shall provide data, information, and case files as requested by the enforcement program monitor to perform all of his or her duties.

(4) The director shall assist the enforcement program monitor in the performance of his or her duties, and the enforcement program monitor shall have the same investigative authority as the director.

(c) The enforcement program monitor shall submit an initial written report of his or her findings and conclusions to the board, the department, and the Legislature no later than September 1, 2002, and every six months thereafter, and be available to make oral reports to each, if requested to do so. The enforcement program monitor may also provide additional information to either the department or the Legislature at his or her discretion or at the request of either the department or the Legislature. The enforcement program monitor shall make his or her reports available to the public or the media. The enforcement program monitor shall make every effort to provide the board with an opportunity

to reply to any facts, findings, issues, or conclusions in his or her reports with which the board may disagree.

(d) The board shall pay for all of the costs associated with the employment of an enforcement program monitor.

(e) This section shall become inoperative on March 31, 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. 4. Section 1620.1 is added to the Business and Professions Code, to read:

1620.1. The Department of Consumer Affairs, in conjunction with the board and the Joint Legislative Sunset Review Committee, shall review the scope of practice for dental auxiliaries. The department shall employ the services of an independent consultant to perform this comprehensive analysis. The department shall be authorized to enter into an interagency agreement or be exempted from obtaining sole source approval for a sole source contract. The board shall pay for all of the costs associated with this comprehensive analysis. The department shall report its findings and recommendations to the Legislature by September 1, 2002.

SEC. 5. Section 2475 of the Business and Professions Code, as amended by Section 27 of Chapter 655 of the Statutes of 1999, is repealed.

SEC. 6. Section 2475 is added to the Business and Professions Code, to read:

2475. Unless otherwise provided by law, no postgraduate trainee, intern, resident postdoctoral fellow, or instructor may engage in the practice of podiatric medicine, or receive compensation therefor, or offer to engage in the practice of podiatric medicine unless he or she holds a valid, unrevoked, and unsuspended certificate to practice podiatric medicine issued by the division. However, a graduate of an approved college or school of podiatric medicine upon whom the degree doctor of podiatric medicine has been conferred, who is issued a limited license, which may be renewed annually for up to four years for this purpose by the division upon recommendation of the board, and who is enrolled in a postgraduate training program approved by the board, may engage in the practice of podiatric medicine whenever and wherever required as a part of that program under the following conditions:

(a) A graduate with a limited license in an approved internship, residency, or fellowship program may participate in training rotations outside the scope of podiatric medicine, under the supervision of a physician and surgeon who holds a medical doctor or doctor of osteopathy degree wherever and whenever required as a part of the training program, and may receive compensation for that practice. If the

graduate fails to receive a license to practice podiatric medicine under this chapter within two years from the commencement of the postgraduate training, all privileges and exemptions under this section shall automatically cease.

(b) Podiatric hospitals functioning as a part of the teaching program of an approved college or school of podiatric medicine in this state may exchange instructors or resident or assistant resident podiatrists with another approved college or school of podiatric medicine not located in this state, or those hospitals may appoint a graduate of an approved school as such a resident for purposes of postgraduate training. Those instructors and residents may practice and be compensated as provided in subdivision (a), but that practice and compensation shall be for a period not to exceed one year.

SEC. 7. Section 3750.51 of the Business and Professions Code is amended to read:

3750.51. (a) Except as provided in subdivisions (b) and (c), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) shall be tolled until the minor reaches the age of majority.

(e) The limitation provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

SEC. 8. Section 6704.1 of the Business and Professions Code is amended to read:

6704.1. (a) The Department of Consumer Affairs, in conjunction with the board, and the Joint Legislative Sunset Review Committee shall review the engineering branch titles specified in Section 6732 to determine whether certain title acts should be eliminated from this

chapter, retained, or converted to practice acts similar to civil, electrical, and mechanical engineering, and whether supplemental engineering work should be permitted for all branches of engineering. The department shall contract with an independent consulting firm to perform this comprehensive analysis of title act registration.

(b) The independent consultant shall perform, but not be limited to, the following: (1) meet with representatives of each of the engineering branches and other professional groups; (2) examine the type of services and work provided by engineers in all branches of engineering and interrelated professions within the marketplace, to determine the interrelationship that exists between the various branches of engineers and other interrelated professions; (3) review and analyze educational requirements of engineers; (4) identify the degree to which supplemental or ''overlapping'' work between engineering branches and interrelated professions occurs; (5) review alternative methods of regulation of engineers in other states and what impact the regulations would have if adopted in California; (6) identify the manner in which local and state agencies utilize regulations and statutes to regulate engineering work; and, (7) recommend changes to existing laws regulating engineers after considering how these changes may effect the health, safety, and welfare of the public.

(c) The board shall reimburse the department for costs associated with this comprehensive analysis. The department shall report its findings and recommendations to the Legislature by September 1, 2002.

SEC. 9. Section 7011 of the Business and Professions Code is amended to read:

7011. The board by and with the approval of the director shall appoint a registrar of contractors and fix his or her compensation.

The registrar shall be the executive officer and secretary of the board and shall carry out all of the administrative duties as provided in this chapter and as delegated to him or her by the board.

For the purpose of administration of this chapter, there may be appointed a deputy registrar, a chief reviewing and hearing officer and, subject to Section 159.5, other assistants and subordinates as may be necessary.

Appointments shall be made in accordance with the provisions of civil service laws.

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.

SEC. 10. Section 7092 of the Business and Professions Code is amended to read:

7092. (a) (1) The director shall appoint a Contractors' State License Board Enforcement Program Monitor no later than January 31, 2001. The director may retain a person for this position by a personal services contract, the Legislature finding, pursuant to Section 19130 of the Government Code, that this is a new state function.

(2) The director shall supervise the enforcement program monitor and may terminate or dismiss him or her from this position.

(b) The director shall advertise the availability of this position. The requirements for this position include experience in conducting investigations and familiarity with state laws, rules, and procedures pertaining to the board and familiarity with relevant administrative procedures.

(c) (1) The enforcement program monitor shall monitor and evaluate the Contractors' State License Board disciplinary system and procedures, making as his or her highest priority the reform and reengineering of the board's enforcement program and operations, and the improvement of the overall efficiency of the board's disciplinary system.

(2) This monitoring duty shall be on a continuing basis for a period of no more than two years from the date of the enforcement program monitor's appointment and shall include, but not be limited to, improving the quality and consistency of complaint processing and investigation and reducing the timeframes for each, reducing any complaint backlog, assuring consistency in the application of sanctions or discipline imposed on licensees, and shall include the following areas: the accurate and consistent implementation of the laws and rules affecting discipline, staff concerns regarding disciplinary matters or procedures, appropriate utilization of licensed professionals to investigate complaints, and the board's cooperation with other governmental entities charged with enforcing related laws and regulations regarding contractors.

(3) The enforcement program monitor shall exercise no authority over the board's discipline operations or staff; however, the board and its staff shall cooperate with him or her, and the board shall provide data, information, and case files as requested by the enforcement program monitor to perform all of his or her duties.

(4) The director shall assist the enforcement program monitor in the performance of his or her duties, and the enforcement program monitor shall have the same investigative authority as the director.

(d) The enforcement program monitor shall submit an initial written report of his or her findings and conclusions to the board, the department, and the Legislature no later than October 1, 2001, and every six months thereafter, and be available to make oral reports to each, if requested to do so. The enforcement program monitor may also provide additional

information to either the department or the Legislature at his or her discretion or at the request of either the department or the Legislature. The enforcement program monitor shall make his or her reports available to the public or the media. The enforcement program monitor shall make every effort to provide the board with an opportunity to reply to any facts, findings, issues, or conclusions in his or her reports with which the board may disagree.

(e) The board shall reimburse the department for all of the costs associated with the employment of an enforcement program monitor.

(f) This section shall remain in effect only until January 31, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 31, 2003, deletes or extends that date.

SEC. 11. Section 8011 is added to the Business and Professions Code, to read:

8011. The board shall promulgate, by regulation, a definition of a ''full-time student'' for the purposes of this chapter.

SEC. 12. Section 8027 of the Business and Professions Code is amended to read:

8027. (a) As used in this section, ''school'' means a court reporter training program or an institution that provides a course of instruction approved by the board, and is approved by the Bureau for Private Postsecondary and Vocational Education, is a public school in this state, or is accredited by the Western Association of Schools and Colleges.

(b) A court reporting school shall be primarily organized to train students for the practice of shorthand reporting, as defined in Sections 8016 and 8017. Its educational program shall be on the postsecondary or collegiate level, and shall not be a correspondence program as defined by the board. It shall be legally organized and authorized to conduct its program under all applicable laws of the state, and shall conform to and offer all components of the minimum prescribed course of study established by the board. Its records shall be kept and shall be maintained in a manner to render them safe from theft, fire, or other loss. The records shall indicate positive daily and clock-hour attendance of each student, apprenticeship and graduation reports, high school transcripts or equivalent, or self-certification of high school graduation or equivalency, transcript of other education, and student progress to date.

(c) Any school intending to offer a program in court reporting shall notify the board within 30 days of the date on which it provides notice to, or seeks approval from, the California Department of Education, the Council for Private Postsecondary and Vocational Education, the Chancellor's Office of the California Community Colleges, or the Western Association of Schools and Colleges, whichever is applicable. The board shall review the proposed curriculum and provide the school tentative approval, or notice of denial, within 60 days of receipt of the

notice. The school shall apply for provisional recognition pursuant to subdivision (d) within no more than one year from the date it begins offering court reporting classes.

(d) The board may grant provisional recognition to a new court reporting school upon satisfactory evidence that it has met all of the provisions of subdivision (b) and this subdivision. Recognition may be granted by the board to a provisionally recognized school after it has been in continuous operation for a period of no less than three consecutive years from the date provisional recognition was granted, during which period the school shall provide satisfactory evidence that at least one person has successfully completed the entire course of study established by the board and complied with the provisions of Section 8020, and has been issued a certificate to practice shorthand reporting as defined in Sections 8016 and 8017. The board may, for good cause shown, extend the three-year provisional recognition period for not more than one year. Failure to meet the provisions and terms of this section shall require the board to deny recognition. Once granted, recognition may be withdrawn by the board for failure to comply with all applicable laws and regulations.

(e) Application for recognition of a court reporting school shall be made upon a form prescribed by the board and shall be accompanied by all evidence, statements, or documents requested. Each branch, extension center, or off-campus facility requires separate application.

(f) All recognized and provisionally recognized court reporting schools shall notify the board of any change in school name, address, telephone number, responsible court reporting program manager, owner of private schools, and the effective date thereof, within 30 days of the change. All of these notifications shall be made in writing.

(g) A school shall notify the board in writing immediately of the discontinuance or pending discontinuance of its court reporting program or any of the program's components. Within two years of the date this notice is sent to the board, the school shall discontinue its court reporting program in its entirety. The board may, for good cause shown, grant not more than two, one-year extensions of this period to a school. If a student is to be enrolled after this notice is sent to the board, a school shall disclose to the student the fact of the discontinuance or pending discontinuance of its court reporting program or any of its program components.

(h) The board shall maintain a roster of currently recognized and provisionally recognized court reporting schools including, but not limited to, the name, address, telephone number, and the name of the responsible court reporting program manager of each school.

(i) The board shall maintain statistics which display the number and passing percentage of all first-time examinees, including, but not limited

to, those qualified by each recognized or provisionally recognized school and those first-time examinees qualified by other methods as defined in Section 8020.

(j) Inspections and investigations shall be conducted by the board as necessary to carry out this section.

(k) All recognized and provisionally recognized schools shall print in their school or course catalog the name, address, and telephone number of the board. At a minimum, the information shall be in 8-point bold type and include the following statement:

''IN ORDER FOR A PERSON TO QUALIFY FROM A SCHOOL TO TAKE THE STATE LICENSING EXAMINATION, THE PERSON SHALL COMPLETE A PROGRAM AT A RECOGNIZED SCHOOL. FOR INFORMATION CONCERNING THE MINIMUM REQUIREMENTS THAT A COURT REPORTING PROGRAM MUST MEET IN ORDER TO BE RECOGNIZED, CONTACT: THE COURT REPORTERS BOARD OF CALIFORNIA; (ADDRESS); (TELEPHONE NUMBER).''

(*l*) Each court reporting school shall file with the board, not later than June 30 of each year, a current school catalog which shows all course offerings and staff, and for private schools, the owner, except that where there have been no changes to the catalog within the previous year, no catalog need be sent. In addition, each school shall also file with the board a statement certifying that the school is in compliance with all statutes and the rules and regulations of the board, signed by the responsible court reporting program manager.

(m) No school offering court reporting shall make any written or verbal claims of employment opportunities or potential earnings unless those claims are based on verified data and reflect current employment conditions.

(n) Any person teaching an academic course, that is a course other than machine shorthand or typing, in a court reporting program shall meet one of the following criteria:

(1) Possess a minimum of an Associate of Arts degree and, in addition, either a minimum of two years of experience teaching the subject being taught or at least two years' work experience in a job substantially related to the subject being taught.

(2) Possess a current license as a certified shorthand reporter and, in addition, either a minimum of two years of experience teaching the subject being taught or at least two years' work experience in a job substantially related to the subject being taught.

(3) Possess a minimum of four years' experience teaching the subject being taught or a minimum of four years' work experience in a job substantially related to the subject being taught.

(4) Possess a minimum of a Bachelor of Arts or Bachelor of Science degree in the subject being taught.

(o) The pass rate of first-time exam takers for each school offering court reporting shall meet or exceed the average pass rate of all first-time test takers for a majority of examinations given for the preceding three years. Failure to do so shall require the board to conduct a review of the program. In addition, the board may place the school on probation and may withdraw recognition if the school continues to place below the above described standard on the two exams that follow the three-year period.

(p) A school shall not require more than one 10 minute qualifying examination, as defined in the regulations of the board, for a student to be eligible to sit for the state certification examination.

(q) A school shall provide the board the actual number of hours of attendance for each applicant the school qualifies for the state licensing examination.

(r) The board shall have the following regulations submitted by December 1, 2001, and in place by July 1, 2002:

(1) Establish the format that shall be used by schools to report tracking of all attendance hours and actual timeframes for completed coursework.

(2) Require schools to provide a minimum of 10 hours of live dictation class each school week for every full-time student.

(3) Require schools to provide students with the opportunity to read back from their stenographic notes a minimum of one time each day to his or her instructor.

(4) Require schools to provide students with the opportunity to practice with a school-approved speed-building tape, or other assigned material, a minimum of one hour per day after school hours as a homework assignment and provide the notes from this tape to their instructor the following day for review.

(5) Develop standardization of policies on the use and administration of qualifier examinations by schools.

(6) Define qualifier exam as follows: The qualifier exam shall consist of 4-voice testimony of 10-minute duration at 200 wpm, graded at 97.5 percent accuracy, and in accordance with the guidelines followed by the board. Schools shall be required to date and number each qualifier and announce the date and number to the students at the time of administering the qualifier. All qualifiers shall indicate the actual dictation time of the test and the school shall catalogue and maintain the

qualifier for a period of not less than three years for the purpose of inspection by the board.

(7) Require schools to develop a program to provide students with the opportunity to interact with professional court reporters to provide skill support, mentoring, or counseling which they can document at least quarterly.

(8) Define qualifications and educational requirements required of instructors and readers that read test material and qualifiers.

SEC. 13. Section 8027.5 is added to the Business and Professions Code, to read:

8027.5. In addition to the authority to conduct disciplinary proceedings under this chapter, the board, through its duly authorized representatives, shall have authority to issue administrative citations or assess fines for the violation of any rules and regulations adopted by the board under the provisions of this chapter.

SEC. 14. The support of the budget, accounting, and personnel functions of the Osteopathic Medical Board of California shall be transferred to the Department of Consumer Affairs, effective July 1, 2002, unless the executive officer of the board and the director agree to an earlier date.

SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

This bill makes various changes to the regulation of professions and vocations and in order for these changes to take effect at the earliest possible opportunity, it is necessary that this act take effect immediately.

CHAPTER 616

An act to amend Sections 8008, 8024, 8024.2, 8025, and 8027 of, to amend, repeal, and add Section 8020 of, and to repeal Section 8006 of, the Business and Professions Code, relating to shorthand reporters.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 8006 of the Business and Professions Code is repealed.

SEC. 2. Section 8008 of the Business and Professions Code is amended to read:

8008. The board has the following powers and duties:

(a) To adopt a seal.

(b) By affirmative vote of at least three members of the board, to suspend, revoke, or impose any other disciplinary action against a certificate, for any cause specified in this chapter.

(c) To charge and collect all fees as provided for in this chapter.

(d) To require the renewal of all certificates.

(e) To issue subpoenas, to administer oaths, and to take testimony concerning any matter within the jurisdiction of the board.

(f) To investigate the actions of any licensee, upon receipt of a verified complaint in writing from any person, for alleged acts or omissions constituting grounds for disciplinary action under the chapter.

(g) To administer the Transcript Reimbursement Fund described in Section 8030.2.

SEC. 3. Section 8020 of the Business and Professions Code is amended to read:

8020. Any person over the age of 18 years, who has not committed any acts or crimes constituting grounds for the denial of licensure under Sections 480, 8025, and 8025.1, who has a high school education or its equivalent as determined by the board, and who has satisfactorily passed an examination under any regulations that the board may prescribe, shall be entitled to a certificate and shall be styled and known as a certified shorthand reporter. No person shall be admitted to the examination without first presenting satisfactory evidence to the board that within the five years immediately preceding the date of application for a certificate, the applicant has obtained one of the following:

(a) One year of experience in making verbatim records of depositions, arbitrations, hearings, or judicial or related proceedings by means of written symbols or abbreviations in shorthand or machine shorthand writing and transcribing these records.

(b) A verified certificate of satisfactory completion of a prescribed course of study in a recognized court reporting school or a certificate from the school that evidences an equivalent proficiency and the ability to make a verbatim record of material dictated in accordance with regulations adopted by the board contained in Title 16 of the California Code of Regulations.

(c) A certificate from the National Court Reporters Association demonstrating proficiency in machine shorthand reporting.

(d) A passing grade on the California state hearing reporters examination.

(e) A valid certified shorthand reporters certificate or license to practice shorthand reporting issued by a state other than California whose requirements and licensing examination are substantially the same as those in California.

(f) 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. Section 8020 is added to the Business and Professions Code, to read:

8020. Any person over the age of 18 years, who has not committed any acts or crimes constituting grounds for the denial of licensure under Sections 480, 8025, and 8025.1, who has a high school education or its equivalent as determined by the board, and who has satisfactorily passed an examination under any regulations that the board may prescribe, shall be entitled to a certificate and shall be styled and known as a certified shorthand reporter. No person shall be admitted to the examination without first presenting satisfactory evidence to the board that within the three years immediately preceding the date of application for a certificate the applicant has obtained one of the following:

(a) One year of experience in making verbatim records of depositions, arbitrations, hearings, or judicial or related proceedings by means of written symbols or abbreviations in shorthand or machine shorthand writing and transcribing these records.

(b) A verified certificate of satisfactory completion of a prescribed course of study in a recognized court reporting school or a certificate from the school that evidences equivalent proficiency and the ability to make a verbatim record of material dictated in accordance with regulations adopted by the board contained in Title 16 of the California Code of Regulations.

(c) A certificate from the National Court Reporters Association demonstrating proficiency in machine shorthand writing.

(d) A passing grade on the California state hearing reporters examination.

(e) A valid certified shorthand reporters certificate or license to practice shorthand reporting issued by a state other than California whose requirements and licensing examination are substantially the same as those in California.

(f) This section shall become operative on January 1, 2004.

SEC. 5. Section 8024 of the Business and Professions Code is amended to read:

8024. All certificates issued under this chapter shall be valid for a period of one year, except for the initial period of licensure as prescribed by the board, and shall expire at 12 midnight on the last day of the month of birth of the licensee unless renewed.

To renew an unexpired certificate, the certificate holder shall, on or before each of the dates on which it would otherwise expire, do all of the following:

(a) Apply for renewal on a form prescribed by the board.

(b) Pay the renewal fee prescribed by this chapter.

(c) Notify the board whether he or she has been convicted of any felony or any misdemeanor if the misdemeanor is substantially related to the functions and duties of a court reporter and whether any disciplinary action by any regulatory or licensing board in this or any other state was taken against the licensee subsequent to the licensee's last renewal.

SEC. 6. Section 8024.2 of the Business and Professions Code is amended to read:

8024.2. (a) Except as otherwise provided in this article, a certificate that has expired may be renewed at any time within the period set forth in Section 8024.5 by doing all of the following:

(1) Applying for renewal on a form prescribed by the board.

(2) Paying the renewal fee prescribed by this chapter.

(3) Notifying the board whether the licensee has been convicted of any felony or any misdemeanor if the misdemeanor is substantially related to the functions and duties of a court reporter and whether any disciplinary action was taken against the licensee by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

(b) If the certificate is not renewed within 30 days after its expiration, the certificate holder, as a condition precedent to renewal, shall also pay the delinquency fee set forth in Section 163.5. Renewal under this section shall be effective 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 certificate shall continue in effect through the date provided in Section 8024 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

The certificate shall not be renewed if the certificate holder has failed to pay monetary sanctions identified in subdivision (g) of Section 8025.

SEC. 7. Section 8025 of the Business and Professions Code is amended to read:

8025. A certificate issued under this chapter may be suspended, revoked, denied, or other disciplinary action may be imposed for one or more of the following causes:

(a) Conviction of any felony or any misdemeanor if the misdemeanor is substantially related to the functions and duties of a court reporter. The record of conviction, or a certified copy thereof, is conclusive evidence of the conviction.

(b) Failure to notify the board of a conviction described in subdivision (a), in accordance with Section 8024 or 8024.2.

(c) Fraud or misrepresentation resorted to in obtaining a certificate hereunder.

(d) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetence in practice, or unprofessional conduct in the practice of shorthand reporting.

''Unprofessional conduct'' includes, but is not limited to, acts contrary to professional standards concerning confidentiality; impartiality; filing and retention of notes; notifications, availability, delivery, execution and certification of transcripts; and any provision of law substantially related to the duties of a certified shorthand reporter.

(e) Repeated unexcused failure, whether or not willful, to transcribe notes of cases pending on appeal and to file the transcripts of those notes within the time required by law or to transcribe or file notes of other proceedings within the time required by law or agreed to by contract. Violation of this subdivision shall also be deemed an act endangering the public health, safety, or welfare within the meaning of Section 494.

(f) Loss or destruction of stenographic notes, whether on paper or electronic media, that prevents the production of a transcript due to negligence of the licensee.

(g) Failure to comply with, or to pay a monetary sanction imposed by, any court for failure to provide timely transcripts. The record of the court order, or a certified copy thereof, is conclusive evidence that the sanction was imposed.

(h) Failure to pay a civil penalty relating to the provision of court reporting services or products.

(i) The revocation of, suspension of, or other disciplinary action against a license to act as a certified shorthand reporter by another state. A certified copy of the revocation, suspension, or disciplinary action by the other state is conclusive evidence of that action.

(j) Violation of this chapter or the statutes, rules, and regulations pertaining to certified shorthand reporters.

SEC. 8. Section 8027 of the Business and Professions Code is amended to read:

8027. (a) As used in this section, ''school'' means a court reporter training program or an institution that provides a course of instruction approved by the board, and is approved by the Bureau for Private Postsecondary and Vocational Education, is a public school in this state, or is accredited by the Western Association of Schools and Colleges.

(b) A court reporting school shall be primarily organized to train students for the practice of shorthand reporting, as defined in Sections 8016 and 8017. Its educational program shall be on the postsecondary or collegiate level. It shall be legally organized and authorized to conduct its program under all applicable laws of the state, and shall conform to and offer all components of the minimum prescribed course of study established by the board. Its records shall be kept and shall be maintained in a manner to render them safe from theft, fire, or other loss. The records

shall indicate positive daily and clock-hour attendance of each student for all classes, apprenticeship and graduation reports, high school transcripts or the equivalent, or self-certification of high school graduation or the equivalent, transcripts of other education, and student progress to date, including all progress and counseling reports.

(c) Any school intending to offer a program in court reporting shall notify the board within 30 days of the date on which it provides notice to, or seeks approval from, the California Department of Education, the Bureau for Private Postsecondary and Vocational Education, the Chancellor's Office of the California Community Colleges, or the Western Association of Schools and Colleges, whichever is applicable. The board shall review the proposed curriculum and provide the school tentative approval, or notice of denial, within 60 days of receipt of the notice. The school shall apply for provisional recognition pursuant to subdivision (d) within no more than one year from the date it begins offering court reporting classes.

(d) The board may grant provisional recognition to a new court reporting school upon satisfactory evidence that it has met all of the provisions of subdivision (b) and this subdivision. Recognition may be granted by the board to a provisionally recognized school after it has been in continuous operation for a period of no less than three consecutive years from the date provisional recognition was granted, during which period the school shall provide satisfactory evidence that at least one person has successfully completed the entire course of study established by the board and complied with the provisions of Section 8020, and has been issued a certificate to practice shorthand reporting as defined in Sections 8016 and 8017. The board may, for good cause shown, extend the three-year provisional recognition period for not more than one year. Failure to meet the provisions and terms of this section shall require the board to deny recognition. Once granted, recognition may be withdrawn by the board for failure to comply with all applicable laws and regulations.

(e) Application for recognition of a court reporting school shall be made upon a form prescribed by the board and shall be accompanied by all evidence, statements, or documents requested. Each branch, extension center, or off-campus facility requires separate application.

(f) All recognized and provisionally recognized court reporting schools shall notify the board of any change in school name, address, telephone number, responsible court reporting program manager, owner of private schools, and the effective date thereof, within 30 days of the change. All of these notifications shall be made in writing.

(g) A school shall notify the board in writing immediately of the discontinuance or pending discontinuance of its court reporting program or any of the program's components. Within two years of the date this

notice is sent to the board, the school shall discontinue its court reporting program in its entirety. The board may, for good cause shown, grant not more than two one-year extensions of this period to a school. If a student is to be enrolled after this notice is sent to the board, a school shall disclose to the student the fact of the discontinuance or pending discontinuance of its court reporting program or any of its program components.

(h) The board shall maintain a roster of currently recognized and provisionally recognized court reporting schools including, but not limited to, the name, address, telephone number, and the name of the responsible court reporting program manager of each school.

(i) The board shall maintain statistics that display the number and passing percentage of all first-time examinees, including, but not limited to, those qualified by each recognized or provisionally recognized school and those first-time examinees qualified by other methods as defined in Section 8020.

(j) Inspections and investigations shall be conducted by the board as necessary to carry out this section, including, but not limited to, unannounced site visits.

(k) All recognized and provisionally recognized schools shall print in their school or course catalog the name, address, and telephone number of the board. At a minimum, the information shall be in 8-point bold type and include the following statement:

''IN ORDER FOR A PERSON TO QUALIFY FROM A SCHOOL TO TAKE THE STATE LICENSING EXAMINATION, THE PERSON SHALL COMPLETE A PROGRAM AT A RECOGNIZED SCHOOL. FOR INFORMATION CONCERNING THE MINIMUM REQUIREMENTS THAT A COURT REPORTING PROGRAM MUST MEET IN ORDER TO BE RECOGNIZED, CONTACT: THE COURT REPORTERS BOARD OF CALIFORNIA; (ADDRESS); (TELEPHONE NUMBER).''

(*l*) Each court reporting school shall file with the board, not later than June 30 of each year, a current school catalog that shows all course offerings and staff, and for private schools, the owner, except that where there have been no changes to the catalog within the previous year, no catalog need be sent. In addition, each school shall also file with the board a statement certifying whether the school is in compliance with all statutes and the rules and regulations of the board, signed by the responsible court reporting program manager.

(m) A school offering court reporting may not make any written or verbal claims of employment opportunities or potential earnings unless

those claims are based on verified data and reflect current employment conditions.

(n) If a school offers a course of instruction that exceeds the board's minimum requirements, the school shall disclose orally and in writing the board's minimum requirements and how the course of instruction differs from those criteria. The school shall make this disclosure before a prospective student executes an agreement obligating that person to pay any money to the school for the course of instruction. The school shall also make this disclosure to all students enrolled on January 1, 2002.

(o) Private schools shall provide each prospective student with all of the following and have the prospective student sign a document that shall become part of that individual's permanent record, acknowledging receipt of each item:

(1) A student consumer information brochure published by the board.

(2) A list of the school's graduation requirements, including the number of tests, the pass point of each test, the speed of each test, and the type of test, such as jury charge or literary.

(3) A list of requirements to qualify for the state certified shorthand reporter licensing examination, including the number of tests, the pass point of each test, the speed of each test, and the type of test such as jury charge or literary, if different than those requirements listed in paragraph (2).

(4) A copy of the school's board-approved benchmarks for satisfactory progress as identified in subdivision (u).

(5) A report showing the number of students from the school who qualified for each of the certified shorthand reporter licensing examinations within the preceding two years, the number of those students that passed each examination, the time, as of the date of qualification, that each student was enrolled in court reporting school, and the placement rate for all students that passed each examination.

(6) On and after January 1, 2005, the school shall also provide to prospective students the number of hours each currently enrolled student who has qualified to take the next licensing test, exclusive of transfer students, has attended court reporting classes.

(p) Public schools shall provide the information in paragraphs (1) to (6), inclusive, to each new student the first day he or she attends theory or machine speed class, if it was not provided previously.

(q) Each enrolled student shall be provided written notification of any change in qualification or graduation requirements that is being implemented due to the requirements of any one of the school's oversight agencies. This notice shall be provided to each affected student at least 30 days before the effective date of the change and shall state the new requirement and the name, address, and telephone number of the

agency that is requiring it of the school. Each student shall initial and date a document acknowledging receipt of that information and that document, or a copy thereof, shall be made part of the student's permanent file.

(r) Schools shall make available a comprehensive final examination in each academic subject to any student desiring to challenge an academic class in order to obtain credit towards certification for the state licensing examination. The points required to pass a challenge examination shall not be higher than the minimum points required of other students completing the academic class.

(s) An individual serving as a teacher, instructor, or reader shall meet the qualifications specified by regulation for his or her position.

(t) Each school shall provide a substitute teacher or instructor for any class for which the teacher or instructor is absent for two consecutive days or more.

(u) The board has the authority to approve or disapprove benchmarks for satisfactory progress which each school shall develop for its court reporting program. Schools shall use only board-approved benchmarks to comply with the provisions of paragraph (4) of subdivision (o) and subdivision (u).

(v) Each school shall counsel each student a minimum of one time within each 12-month period to identify the level of attendance and progress, and the prognosis for completing the requirements to become eligible to sit for the state licensing examination. If the student has not progressed in accordance with the board-approved benchmarks for that school, the student shall be counseled a minimum of one additional time within that same 12-month period.

(w) The school shall provide to the board, for each student qualifying through the school as eligible to sit for the state licensing examination, the number of hours the student attended court reporting classes, both academic and machine speed classes, including theory.

(x) The pass rate of first-time exam takers for each school offering court reporting shall meet or exceed the average pass rate of all first-time test takers for a majority of examinations given for the preceding three years. Failure to do so shall require the board to conduct a review of the program. In addition, the board may place the school on probation and may withdraw recognition if the school continues to place below the above-described standard on the two exams that follow the three-year period.

(y) The board shall adopt regulations to implement the requirements of this section not later than September 1, 2002.

(z) The board may recover costs for any additional expenses incurred under the enactment amending this section in the 2001–02 Regular Session pursuant to its fee authority in Section 8031.

SEC. 9. Section 8027 of the Business and Professions Code is amended to read:

8027. (a) As used in this section, ''school'' means a court reporter training program or an institution that provides a course of instruction approved by the board, and is approved by the Bureau for Private Postsecondary and Vocational Education, is a public school in this state, or is accredited by the Western Association of Schools and Colleges.

(b) A court reporting school shall be primarily organized to train students for the practice of shorthand reporting, as defined in Sections 8016 and 8017. Its educational program shall be on the postsecondary or collegiate level. It shall be legally organized and authorized to conduct its program under all applicable laws of the state, and shall conform to and offer all components of the minimum prescribed course of study established by the board. Its records shall be kept and shall be maintained in a manner to render them safe from theft, fire, or other loss. The records shall indicate positive daily and clock-hour attendance of each student for all classes, apprenticeship and graduation reports, high school transcripts or the equivalent or self-certification of high school graduation or the equivalent, transcripts of other education, and student progress to date, including all progress and counseling reports.

(c) Any school intending to offer a program in court reporting shall notify the board within 30 days of the date on which it provides notice to, or seeks approval from, the California Department of Education, the Bureau for Private Postsecondary and Vocational Education, the Chancellor's Office of the California Community Colleges, or the Western Association of Schools and Colleges, whichever is applicable. The board shall review the proposed curriculum and provide the school tentative approval, or notice of denial, within 60 days of receipt of the notice. The school shall apply for provisional recognition pursuant to subdivision (d) within no more than one year from the date it begins offering court reporting classes.

(d) The board may grant provisional recognition to a new court reporting school upon satisfactory evidence that it has met all of the provisions of subdivision (b) and this subdivision. Recognition may be granted by the board to a provisionally recognized school after it has been in continuous operation for a period of no less than three consecutive years from the date provisional recognition was granted, during which period the school shall provide satisfactory evidence that at least one person has successfully completed the entire course of study established by the board and complied with the provisions of Section 8020, and has been issued a certificate to practice shorthand reporting as defined in Sections 8016 and 8017. The board may, for good cause shown, extend the three-year provisional recognition period for not more than one year. Failure to meet the provisions and terms of this section

shall require the board to deny recognition. Once granted, recognition may be withdrawn by the board for failure to comply with all applicable laws and regulations.

(e) Application for recognition of a court reporting school shall be made upon a form prescribed by the board and shall be accompanied by all evidence, statements, or documents requested. Each branch, extension center, or off-campus facility requires separate application.

(f) All recognized and provisionally recognized court reporting schools shall notify the board of any change in school name, address, telephone number, responsible court reporting program manager, owner of private schools, and the effective date thereof, within 30 days of the change. All of these notifications shall be made in writing.

(g) A school shall notify the board in writing immediately of the discontinuance or pending discontinuance of its court reporting program or any of the program's components. Within two years of the date this notice is sent to the board, the school shall discontinue its court reporting program in its entirety. The board may, for good cause shown, grant not more than two, one-year extensions of this period to a school. If a student is to be enrolled after this notice is sent to the board, a school shall disclose to the student the fact of the discontinuance or pending discontinuance of its court reporting program or any of its program components.

(h) The board shall maintain a roster of currently recognized and provisionally recognized court reporting schools including, but not limited to, the name, address, telephone number, and the name of the responsible court reporting program manager of each school.

(i) The board shall maintain statistics that display the number and passing percentage of all first-time examinees, including, but not limited to, those qualified by each recognized or provisionally recognized school and those first-time examinees qualified by other methods as defined in Section 8020.

(j) Inspections and investigations shall be conducted by the board as necessary to carry out this section, including, but not limited to, unannounced site visits.

(k) All recognized and provisionally recognized schools shall print in their school or course catalog the name, address, and telephone number of the board. At a minimum, the information shall be in 8-point bold type and include the following statement:

"IN ORDER FOR A PERSON TO QUALIFY FROM A SCHOOL TO TAKE THE STATE LICENSING EXAMINATION, THE PERSON SHALL COMPLETE A PROGRAM AT A RECOGNIZED SCHOOL. FOR INFORMATION CONCERNING THE MINIMUM REQUIREMENTS THAT A COURT REPORTING PROGRAM

MUST MEET IN ORDER TO BE RECOGNIZED, CONTACT: THE COURT REPORTERS BOARD OF CALIFORNIA; (ADDRESS); (TELEPHONE NUMBER).''

(*l*) Each court reporting school shall file with the board, not later than June 30 of each year, a current school catalog that shows all course offerings and staff, and for private schools, the owner, except that where there have been no changes to the catalog within the previous year, no catalog need be sent. In addition, each school shall also file with the board a statement certifying whether the school is in compliance with all statutes and the rules and regulations of the board, signed by the responsible court reporting program manager.

(m) A school offering court reporting may not make any written or verbal claims of employment opportunities or potential earnings unless those claims are based on verified data and reflect current employment conditions.

(n) If a school offers a course of instruction that exceeds the board's minimum requirements, the school shall disclose orally and in writing the board's minimum requirements and how the course of instruction differs from those criteria. The school shall make this disclosure before a prospective student executes an agreement obligating that person to pay any money to the school for the course of instruction. The school shall also make this disclosure to all students enrolled on January 1, 2002.

(o) Private schools shall provide each prospective student with all of the following and have the prospective student sign a document that shall become part of that individual's permanent record, acknowledging receipt of each item:

(1) A student consumer information brochure published by the board.

(2) A list of the school's graduation requirements, including the number of tests, the pass point of each test, the speed of each test, and the type of test, such as jury charge or literary.

(3) A list of requirements to qualify for the state certified shorthand reporter licensing examination, including the number of tests, the pass point of each test, the speed of each test, and the type of test, such as jury charge or literary, if different than those requirements listed in paragraph (2).

(4) A copy of the school's board-approved benchmarks for satisfactory progress as identified in subdivision (u).

(5) A report showing the number of students from the school who qualified for each of the certified shorthand reporter licensing examinations within the preceding two years, the number of those students that passed each examination, the time, as of the date of

qualification, that each student was enrolled in court reporting school, and the placement rate for all students that passed each examination.

(6) On and after January 1, 2005, the school shall also provide to prospective students the number of hours each currently enrolled student who has qualified to take the next licensing test, exclusive of transfer students, has attended court reporting classes.

(p) Public schools shall provide the information in paragraphs (1) to (6), inclusive, to each new student the first day he or she attends theory or machine speed class, if it was not provided previously.

(q) Each enrolled student shall be provided written notification of any change in qualification or graduation requirements that is being implemented due to the requirements of any one of the school's oversight agencies. This notice shall be provided to each affected student at least 30 days before the effective date of the change and shall state the new requirement and the name, address, and telephone number of the agency that is requiring it of the school. Each student shall initial and date a document acknowledging receipt of that information and that document, or a copy thereof, shall be made part of the student's permanent file.

(r) Schools shall make available a comprehensive final examination in each academic subject to any student desiring to challenge an academic class in order to obtain credit towards certification for the state licensing examination. The points required to pass a challenge examination shall not be higher than the minimum points required of other students completing the academic class.

(s) An individual serving as a teacher, instructor, or reader shall meet the qualifications specified by regulation for his or her position.

(t) Each school shall provide a substitute teacher or instructor for any class for which the teacher or instructor is absent for two consecutive days or more.

(u) The board has the authority to approve or disapprove benchmarks for satisfactory progress which each school shall develop for its court reporting program. Schools shall use only board-approved benchmarks to comply with the provisions of paragraph (4) of subdivision (o) and subdivision (u).

(v) Each school shall counsel each student a minimum of one time within each 12-month period to identify the level of attendance and progress, and the prognosis for completing the requirements to become eligible to sit for the state licensing examination. If the student has not progressed in accordance with the board-approved benchmarks for that school, the student shall be counseled a minimum of one additional time within that same 12-month period.

(w) The school shall provide to the board, for each student qualifying through the school as eligible to sit for the state licensing examination,

the number of hours the student attended court reporting classes, both academic and machine speed classes, including theory.

(x) The pass rate of first-time exam takers for each school offering court reporting shall meet or exceed the average pass rate of all first-time test takers for a majority of examinations given for the preceding three years. Failure to do so shall require the board to conduct a review of the program. In addition, the board may place the school on probation and may withdraw recognition if the school continues to place below the above described standard on the two exams that follow the three-year period.

(y) A school shall not require more than one 10 minute qualifying examination, as defined in the regulations of the board, for a student to be eligible to sit for the state certification examination.

(z) A school shall provide the board the actual number of hours of attendance for each applicant the school qualifies for the state licensing examination.

(aa) The board shall, by December 1, 2001, do the following by regulation as necessary:

(1) Establish the format that shall be used by schools to report tracking of all attendance hours and actual timeframes for completed coursework.

(2) Require schools to provide a minimum of 10 hours of live dictation class each school week for every full-time student.

(3) Require schools to provide students with the opportunity to read back from their stenographic notes a minimum of one time each day to his or her instructor.

(4) Require schools to provide students with the opportunity to practice with a school-approved speed-building tape, or other assigned material, a minimum of one hour per day after school hours as a homework assignment and provide the notes from this tape to their instructor the following day for review.

(5) Develop standardization of policies on the use and administration of qualifier examinations by schools.

(6) Define qualifier exam as follows: the qualifier exam shall consist of 4-voice testimony of 10-minute duration at 200 wpm, graded at 97.5 percent accuracy, and in accordance with the guidelines followed by the board. Schools shall be required to date and number each qualifier and announce the date and number to the students at the time of administering the qualifier. All qualifiers shall indicate the actual dictation time of the test and the school shall catalog and maintain the qualifier for a period of not less than three years for the purpose of inspection by the board.

(7) Require schools to develop a program to provide students with the opportunity to interact with professional court reporters to provide skill

support, mentoring, or counseling which they can document at least quarterly.

(8) Define qualifications and educational requirements required of instructors and readers that read test material and qualifiers.

(bb) The board shall adopt regulations to implement the requirements of this section not later than September 1, 2002.

(cc) The board may recover costs for any additional expenses incurred under the enactment amending this section in the 2001-02 Regular Session pursuant to its fee authority in Section 8031.

SEC. 10. Section 9 of this bill incorporates amendments to Section 8027 of the Business and Professions Code proposed by this bill and SB 26. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 8027 of the Business and Professions Code, and (3) this bill is enacted after SB 26, in which case Section 8027 of the Business and Professions Code, as amended by SB 26, shall remain operative only until the operative date of this bill, at which time Section 9 of this bill shall become operative, and Section 8 of this bill shall not become operative.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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.

CHAPTER 617

An act to amend Sections 2230.5, 2960.05, 3750.51, 4982.05, and 4992.31 of the Business and Professions Code, relating to healing arts.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 2230.5 of the Business and Professions Code is amended to read:

2230.5. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years after the board, or a

division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitation provided for by subdivision (a).

(c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation provided for by subdivision (a) upon proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

SEC. 2. Section 2960.05 of the Business and Professions Code is amended to read:

2960.05. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

SEC. 3. Section 3750.51 of the Business and Professions Code is amended to read:

3750.51. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed

within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

SEC. 4. Section 4982.05 of the Business and Professions Code is amended to read:

4982.05. (a) Except as provided in subdivisions (b), (c), and (e) any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the grounds for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

SEC. 5. Section 4992.31 of the Business and Professions Code is amended to read:

4992.31. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

CHAPTER 618

An act to amend Sections 17207 and 24347.5 of the Revenue and Taxation Code, relating to disaster relief, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 17207 of the Revenue and Taxation Code is amended to read:

17207. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state emergency for the County of Napa.

(b) (1) In the case of any loss allowed under Section 165(c) of the Internal Revenue Code, relating to limitation of losses of individuals, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 17276, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the adjusted taxable income for each of the prior taxable years to which that excess disaster loss is carried.

(c) ''Excess disaster loss'' means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code which exceeds the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(f) For purposes of this section, ''adjusted taxable income'' shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

(g) For losses described in paragraphs (15), (16), (17), (18), (19), (20), and (21) of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 2. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes or any other related casualty that occurred in the County of San Bernardino in June and July of 1992.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties

of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state of emergency for the County of Napa.

(b) (1) In the case of any loss allowed under Section 165 of the Internal Revenue Code, relating to losses, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 24416, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the net income for each of the prior taxable years to which that excess disaster loss is carried.

(c) ''Excess disaster loss'' means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code, which exceeds the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the excess disaster loss to be carried to other taxable years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(g) For losses described in paragraphs (15), (16), (17), (18), (19), (20), and (21) of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 3. The Legislature finds and declares that this act fulfills a statewide public purpose because of both of the following:

(a) The Governor of California has officially proclaimed a state of emergency relative to the earthquake that occurred in California in September 2000, thus qualifying affected persons for various forms of governmental assistance and relief.

(b) This act is consistent with and supplements the proclaimed disaster relief by providing necessary fiscal assistance and tax relief to affected persons to allow them to maintain essential basic services and repair damage to, and restore, their homes and businesses.

SEC. 4. The amendments made by this act to paragraph (1) of subdivision (b) of Section 17207 of, and to paragraph (1) of subdivision (b) of Section 24347.5 of, the Revenue and Taxation Code shall apply to disaster losses sustained during or after September 2000.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

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

In order to timely provide essential relief to those persons who have suffered damage or loss as a result of the earthquake that occurred in California in September 2000, it is necessary that this act take effect immediately.

CHAPTER 619

An act to amend Sections 116761.20 and 116761.50 of the Health and Safety Code, relating to drinking water, and making an appropriation therefor.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 116761.20 of the Health and Safety Code is amended to read:

116761.20. (a) Planning and preliminary engineering studies, project design, and construction costs may be funded under this chapter by loans, or, in the case of public agencies or private not-for-profit water companies, by grants or a combination of grants and loans.

(b) The department shall determine what portion of the full costs the public agency or private not-for-profit water company is capable of repaying and authorize funding in the form of a loan for that amount. The department shall authorize a grant only to the extent the department finds the public agency or not-for-profit water company is unable to repay the full costs of a loan.

(c) At the request of the department, the Public Utilities Commission shall submit comments concerning the ability of suppliers, subject to its jurisdiction, to finance the project from other sources and to repay the loan.

SEC. 2. Section 116761.50 of the Health and Safety Code is amended to read:

116761.50. (a) The department may enter into contracts with applicants for grants or loans for the purposes set forth in this chapter. Any contract entered into pursuant to this section shall include only terms and conditions consistent with this chapter and the regulations established under this chapter.

(b) The contract shall include all of the following terms and conditions that are applicable:

(1) An estimate of the reasonable cost of the project or study.

(2) An agreement by the department to loan or grant, or loan and grant, the applicant an amount that equals the portion of the costs found by the department to be eligible for a state loan or grant. The agreement may provide for disbursement of funds during the progress of the study or construction, or following completion of the study or construction, as agreed by the parties.

(3) An agreement by the applicant to proceed expeditiously with the project or study.

(4) An agreement by the applicant to commence operations of the project upon completion of the project, and to properly operate and maintain the project in accordance with the applicable provisions of law.

(5) In the case of a loan, an agreement by the applicant to repay the state, over a period not to exceed the useful life of the project or 20 years, whichever is shorter, except as provided in the federal act, or in the case of a study, over a period not to exceed five years, all of the following:

(A) The amount of the loan.

(B) The administrative fee specified in subdivision (a) of Section 116761.70.

(C) Interest on the principal, which is the amount of the loan plus the administrative fee.

(6) In the case of a grant, an agreement by the public agency or private not-for-profit water company to operate and maintain the water system for a period of 20 years, unless otherwise authorized by the department.

(c) The contract may include any of the following terms and conditions:

(1) An agreement by the supplier to adopt a fee structure that provides for the proper maintenance and operations of the project and includes a sinking fund for repair and replacement of the facilities in cases where appropriate. The fee structure shall also provide an acceptable dedicated source of revenue for the repayment of the amount of the loan, and the payment of administrative fees and interest.

(2) If the entire project is not funded pursuant to this chapter, the department may include a provision requiring the applicant to share the cost of the project or obtain funding from other sources.

(d) The department may require applicants to provide security for loan contracts.

CHAPTER 620

An act to amend Sections 1240, 1241.5, 42127.6, and 42638 of the Education Code, relating to public school finance.

[Approved by Governor October 8, 2001. Filed with
Secretary of State October 9, 2001.]

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

SECTION 1. Section 1240 of the Education Code is amended to read:

1240. The superintendent of schools of each county shall do all of the following:

(a) Superintend the schools of his or her county.

(b) Maintain responsibility for the fiscal oversight of the school district in his or her county pursuant to the authority granted by this code.

(c) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(d) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(e) Annually present a report to the school district board and the Superintendent of Public Instruction regarding the fiscal solvency of any school district with a disapproved budget, qualified interim certification, or a negative interim certification, or that has been determined at any time to be in a position of fiscal uncertainty pursuant to Section 42127.6.

(f) Keep in his or her office the reports of the Superintendent of Public Instruction.

(g) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of any applicant or his or her authorized agent.

(h) Enforce the course of study.

(i) Enforce the use of state textbooks and of high school textbooks regularly adopted by the proper authority.

(j) Preserve carefully all reports of school officers and teachers.

(k) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the State Department of Education.

(*l*) (1) Submit two reports during the fiscal year to the county board of education in accordance with the following:

(A) The first report shall cover the financial and budgetary status of the county office of education for the period ending October 31. The

second report shall cover the period ending January 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent of schools no later than 45 days after the close of the period being reported.

(B) As part of each report, the superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for two subsequent fiscal years. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent of Public Instruction, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. For purposes of this subdivision, a negative certification shall be assigned to any county office of education that, based upon current projections, will be unable to meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification shall be assigned to any county office of education that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to any county office of education that will meet its financial obligations for the current fiscal year and subsequent two fiscal years. In accordance with those standards, the Superintendent of Public Instruction may reclassify any certification. If a county office of education receives a negative certification, the Superintendent of Public Instruction, or his or her designee, may exercise the authority set forth in subdivision (c) of Section 1630. Copies of each certification, and of the report containing that certification, shall be sent to the Superintendent of Public Instruction at the time the certification is submitted to the county board of education. Copies of each qualified or negative certification, and of the report containing that certification, shall be sent to the Controller at the time the certification is submitted to the county board of education.

(2) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127. The reports and supporting data shall be made available by the county superintendent of schools to any interested party upon request.

(3) This subdivision does not preclude the submission of additional budgetary or financial reports by the superintendent to the county board of education or to the Superintendent of Public Instruction.

(4) The county superintendent of schools is not responsible for the fiscal oversight of the community colleges in the county, however, he or she may perform financial services on behalf of those community colleges.

(m) When so requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(n) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of any certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of any educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent of schools discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of any educational program has been reported.

SEC. 2. Section 1241.5 of the Education Code is amended to read:

1241.5. (a) At any time during a fiscal year, the county superintendent may audit the expenditures and internal controls of school districts he or she determines to be fiscally accountable, and shall conduct this audit in a timely and efficient manner. The county superintendent shall report the findings and recommendation to the governing board of the district within 45 days of completing the audit. The governing board shall, no later than 15 days after receipt of the report, notify the county superintendent of schools of its proposed actions on the county superintendent's recommendation. Upon review of the governing board report, the county superintendent, at his or her discretion, may revoke the authority for the district to be fiscally accountable pursuant to Section 42650.

(b) At any time during a fiscal year, the county superintendent may review or audit the expenditures and internal controls of any school district in his or her county if he or she has reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. The review or audit conducted by the county superintendent shall be focused on the alleged fraud, misappropriation of funds, or other illegal fiscal practices and shall be conducted in a timely and efficient manner. The county superintendent shall report the findings and recommendations to the governing board of the school district at a regularly scheduled school district board meeting within 45 days of completing the review, audit, or examination. The governing board of the school district shall, no later than 15 calendar days after receipt of the report, notify the county superintendent of its proposed actions on the county superintendent's recommendations. Upon review of the school district governing board report, the county superintendent, at his or her discretion, and consistent with law, may disapprove an order for payment of funds consistent with Section 42638.

SEC. 3. Section 42127.6 of the Education Code is amended to read:

42127.6. (a) If at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent

fiscal years or if a school district has a qualified certification pursuant to Section 42131, he or she shall notify the governing board of the school district and the Superintendent of Public Instruction in writing of that determination and the basis for the determination. The notification shall include the assumptions used in making the determination and shall be available to the public. The county superintendent of schools shall do any or all of the following, as necessary, to ensure that the district meets its financial obligations:

(1) Assign a fiscal expert, paid for by the county superintendent, to advise the district on its financial problems.

(2) Conduct a study of the financial and budgetary conditions of the district that shall include, but not be limited to, a review of internal controls. If, in the course of this review, the county superintendent determines that his or her office requires analytical assistance or expertise that is not available through the district, he or she may employ, on a short-term basis, with the approval of the Superintendent of Public Instruction, staff, including certified public accountants, to provide the assistance and expertise. The school district shall pay 75 percent and the county office of education shall pay 25 percent of these staff costs.

(3) Direct the school district to submit a financial projection of all fund and cash balances of the district as of June 30 of the current year and subsequent fiscal years as he or she requires.

(4) Require the district to encumber all contracts and other obligations, to prepare appropriate cash-flow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables.

(5) Direct the district to submit a proposal for addressing the fiscal conditions that resulted in the determination that the district may not be able to meet its financial obligations.

(6) Withhold compensation of the members of the governing board and the district superintendent for failure to provide requested financial information. This action may be appealed to the Superintendent of Public Instruction pursuant to subdivision (b).

Any contract entered into by a county superintendent of schools for the purposes of this subdivision is subject to the approval of the Superintendent of Public Instruction.

(b) Within five days of the county superintendent making the determination specified in subdivision (a), a school district may appeal the basis of the determination, and any of the proposed actions that the county superintendent has indicated that he or she will take to further examine the financial condition of the district. The Superintendent of Public Instruction shall sustain or deny any or all parts of the appeal within 10 days.

(c) If, after taking the actions identified in subdivision (a), the county superintendent determines that a district will be unable to meet its financial obligations for the current or subsequent fiscal year, he or she shall notify the school district governing board and the Superintendent of Public Instruction in writing of that determination and the basis for that determination. The notification shall include the assumptions used in making the determination and shall be available to the public.

(d) Within five days of the county superintendent making the determination specified in subdivision (c), a school district may appeal that determination to the Superintendent of Public Instruction. The Superintendent of Public Instruction shall sustain or deny the appeal within 10 days. If the governing board of the school district appeals the determination, the county superintendent of schools may stay any action of the governing board that he or she determines is inconsistent with the district's ability to meet its financial obligations for the current or subsequent fiscal year until resolution of the appeal by the Superintendent of Public Instruction.

(e) If the appeal described in subdivision (d) is denied or not filed, or if the district has a negative certification pursuant to Section 42131, the county superintendent, in consultation with the Superintendent of Public Instruction, shall, as necessary to enable the district to meet its financial obligation, do any or all of the following:

(1) Develop and impose, in consultation with the Superintendent of Public Instruction and the school district governing board, a budget revision that will enable the district to meet its financial obligations in the current fiscal year.

(2) Stay or rescind any action that is determined to be inconsistent with the school district's ability to meet its obligations for the current or subsequent fiscal year. This includes any actions up to the point that the subsequent year's budget is approved by the county superintendent of schools. The county superintendent of schools shall inform the school district governing board in writing of his or her justification for any exercise of authority under this paragraph.

(3) Assist in developing, in consultation with the governing board of the school district, a financial plan that will enable the district to meet its future obligations.

(4) Assist in developing, in consultation with the governing board of the school district, a budget for the subsequent fiscal year. If necessary, the county superintendent of schools shall continue to work with the governing board of the school district until the budget for the subsequent year is adopted.

(5) As necessary, appoint a fiscal adviser to perform any or all of the duties prescribed by this section on his or her behalf.

(f) Any action taken by the county superintendent of schools pursuant to paragraph (1) or (2) of subdivision (e) shall be accompanied by a notification that shall include the actions to be taken, the reasons for the actions, and the assumptions used to support the necessity for these actions.

(g) This section does not authorize the county superintendent to abrogate any provision of a collective bargaining agreement that was entered into by a school district prior to the date upon which the county superintendent of schools assumed authority pursuant to subdivision (e).

(h) The school district shall pay 75 percent and the county office of education shall pay 25 percent of the administrative expenses incurred pursuant to subdivision (e) or costs associated with improving the district's financial management practices. The Superintendent of Public Instruction shall develop, and distribute to affected school districts and county offices of education, advisory guidelines regarding the appropriate amount of administrative expenses charged pursuant to this subdivision.

(i) Notwithstanding Section 42647 or 42650, or any other provision of law, a county treasurer shall not honor any warrant when, pursuant to Sections 42127 to 42127.5, inclusive, or pursuant to this section, the county superintendent or the Superintendent of Public Instruction, as appropriate, has disapproved that warrant or the order on school district funds for which a warrant was prepared.

(j) Effective upon the certification of the election results for a newly organized school district pursuant to Section 35763, the county superintendent of schools may exercise any of the powers and duties of this section regarding the reorganized school district and the other affected school districts until the reorganized school district becomes effective for all purposes in accordance with Article 4 (commencing with Section 35530) of Chapter 3 of Part 21.

SEC. 4. Section 42638 of the Education Code is amended to read:

42638. (a) If the order is disapproved by the county superintendent of schools, it shall be returned to the governing board of the school district, except as otherwise provided in this code for the registration of warrants, with a statement of his or her reasons for disapproving the order.

(b) If the county superintendent determines that there is evidence that fraud or misappropriation of funds has occurred, the county superintendent shall notify the governing board of the school district, the State Controller, the Superintendent of Public Instruction, and the local district attorney.

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.

CHAPTER 621

An act to amend Sections 94806, 94808, 94810, 94825, 94840, 94877, 94944, 94945, 94960, and 94985 of, and to add Section 94995.3 to, the Education Code, relating to private postsecondary education, and making an appropriation therefor.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 94806 of the Education Code is amended to read:

94806. (a) This section applies to every audit, review, and statement prepared by an independent accountant and to every financial report required to be prepared or filed by this chapter.

(b) Institutional audits and reviews of financial data, including the preparation of financial statements, shall comply with all of the following:

(1) An institution that collected seven hundred fifty thousand dollars ($750,000) or more in total student charges in its preceding fiscal year shall file financial reports prepared in accordance with generally accepted accounting principles established by the American Institute of Certified Public Accountants, and audited or reviewed by an independent certified public accountant who is not an employee, officer, or corporate director or member of the governing board of the institution.

(2) An institution that collected less than seven hundred fifty thousand dollars ($750,000) in total student charges in its preceding fiscal year shall file financial reports prepared in accordance with generally accepted accounting principles established by the American Institute of Certified Public Accountants. These financial reports may be prepared by an individual with sufficient training to adhere to the required accounting principles.

(3) Financial reports prepared on an annual basis shall include a balance sheet, statement of operations, statement of cash-flow, and statement of retained earnings or capital. Nonprofit institutions shall

provide this information in the manner required under generally accepted accounting principles for nonprofit organizations.

(4) The financial report shall establish whether the institution complies with subdivision (a) of Section 94804 or subdivision (a) of Section 94855, if applicable, and whether any of the circumstances described in subdivision (b) of Section 94804 or subdivision (b) of Section 94855, if applicable, exist.

(5) If an audit that is performed to determine compliance with any federal or state student financial aid program reveals any failure to comply with the requirements of the program, and the noncompliance creates any liability or potential liability for the institution, the financial report shall reflect the liability or potential liability.

(6) Work papers for the financial statements shall be retained for five years from the date of the reports, and shall be made available to the bureau upon request after completion of the report.

(c) Any audits shall be conducted in accordance with generally accepted auditing standards, and shall include the matters described in subdivision (d).

(d) If an audit is conducted, the accountant shall obtain an understanding of the institution's internal financial control structure, assess any risks, and report any material deficiencies in the internal controls.

(e) Any audit or financial report shall contain a statement signed by the individual who has prepared the report stating that the institution has paid or has not paid to the bureau all amounts owed under Section 94945. If the institution is a corporation that is publicly traded on a national stock exchange, the submission of the corporation's annual report shall be deemed to comply with this section. The bureau shall be deemed an intended beneficiary of that statement in any audit or financial report. An institution that has not paid all amounts owed to the bureau under Section 94945 shall report to the bureau within 30 days on its plan to become current in these payments. This subdivision shall not be construed to require the institution to prepare a separate audit or report on the Student Tuition Recovery Fund.

SEC. 2. Section 94808 of the Education Code is amended to read:

94808. (a) Each institution approved to operate under this chapter shall be required to report to the bureau, by July 1 of each year, or another date designated by the bureau, the following information for educational programs offered in the prior fiscal year:

(1) The total number of students enrolled, by level of degree or type of diploma program.

(2) The number of degrees and diplomas awarded, by level of degree.

(3) The degree levels offered.

(4) Program completion rates.

(5) The schedule of tuition and fees required for each term, program, course of instruction, or degree offered.

(6) Financial information demonstrating compliance with subdivisions (b) and (c) of Section 94804 and subdivisions (b) and (c) of Section 94855, if applicable.

(7) Institutions having a probationary or conditional status shall submit an annual report reviewing their progress in meeting the standards required for approval status.

(8) A statement indicating whether the institution is or is not current on its payments to the Student Tuition Recovery Fund.

(9) Any additional information that the council may prescribe.

(b) Colleges and universities operating under paragraph (6) of subdivision (b) of Section 94739 shall comply with the reporting requirements of paragraphs (1), (2), (3), and (5) of subdivision (a).

(c) Program completion rates and placement data shall be reported in accordance with the standards and criteria prescribed by the bureau pursuant to paragraphs (1) to (4), inclusive, of subdivision (a) of Section 94816 and Section 94859, if applicable. Based on the review of information submitted to fulfill the requirements of this section, the bureau may initiate a compliance review and may place the institution on probation pursuant to subdivision (h) of Section 94901 and subdivision (i) of Section 94915, and may require evidence of financial stability and responsibility pursuant to Sections 94804 and 94855, if applicable.

SEC. 3. Section 94810 of the Education Code is amended to read:

94810. (a) Any written contract or agreement for educational services with an institution shall include all of the following:

(1) On the first page of the agreement or contract, in 12-point boldface print or larger, the following statement:

''Any questions or problems concerning this school which have not been satisfactorily answered or resolved by the school should be directed to the Bureau for Private Postsecondary and Vocational Education, (address), Sacramento, California 95814.''

(2) In underlined capital letters on the same page of the contract or agreement in which the student's signature is required, the total amount that the student is obligated to pay for the course of instruction and all other services and facilities furnished or made available to the student by the school, including any charges made by the school for tuition, room and board, books, materials, supplies, shop and studio fees, and any other fees and expenses that the student will incur upon enrollment.

(3) A list of any charges and deposits that are nonrefundable clearly identified as nonrefundable charges.

(4) The name and address of the school and the addresses where instruction will be provided.

(5) The name and description of the program of instruction, including the total number of credits, classes, hours, or lessons required to complete the program of instruction.

(6) A clear and conspicuous statement that the agreement or contract is a legally binding instrument when signed by the student and accepted by the school.

(7) A clear and conspicuous caption, ''BUYER'S RIGHT TO CANCEL'' under which it is explained that the student has the right to cancel the enrollment agreement and obtain a refund, the form and means of notice that the student should use in the event that he or she elects to cancel the enrollment agreement, and the title and address of the school official to whom the notice should be sent or delivered.

(8) A clear statement of the refund policy written in plain English.

(9) The signature of the student under the following statement that is presented in 12-point boldface or larger print: ''My signature below certifies that I have read, understood, and agreed to my rights and responsibilities, and that the institution's cancellation and refund policies have been clearly explained to me.''

(10) If the student is not a resident of California or is the recipient of third-party payor tuition and course costs, such as workforce investment vouchers or rehabilitation funding, a clear statement that the student is not eligible for protection under and recovery from the Student Tuition Recovery Fund.

(11) A statement that the student is responsible for paying the state assessment amount for the Student Tuition Recovery Fund.

(b) All contracts and enrollment agreements signed by the student shall be written in language that is capable of being easily understood. If English is not the primary language spoken by the student, the student shall have the right to obtain a clear explanation of the terms and conditions of the agreement and all cancellation and refund policies in his or her primary language.

SEC. 4. Section 94825 of the Education Code is amended to read:

94825. (a) The institution shall publish a current schedule of all student charges, a statement of the purpose for those charges, and a statement of the cancellation and refund policies with examples of the application of the policies, and shall provide the schedule to all current and prospective students prior to enrollment. The schedule shall clearly indicate and differentiate all mandatory and optional student charges. The institution shall include a clear statement written in English describing the procedures that a student is required to follow to cancel the contract or agreement and obtain a refund. If the institution solicited the student or negotiated the agreement in a language other than English, the notice to the student shall be in that same language. The schedule shall specify the total costs of attendance which shall include, but not

necessarily be limited to, tuition, fees, assessments for the Student Tuition Recovery Fund, equipment costs, housing, transportation, books, necessary supplies, materials, shop and studio fees, and any other fees and expenses that the student will incur upon enrollment.

The schedule shall clearly identify all charges and deposits that are nonrefundable.

(b) The schedule shall also contain both of the following:

(1) A statement, to be provided by the bureau, specifying that it is a state requirement that a resident California student who pays his or her own tuition, either directly or through a loan, is required to pay a state-imposed fee for the Student Tuition Recovery Fund.

(2) A statement, to be provided by the bureau, describing the purposes, operation, and eligibility requirements of the Student Tuition Recovery Fund.

SEC. 5. Section 94840 of the Education Code is amended to read:

94840. At least 90 days prior to the expiration of an approval to operate, the institution shall complete and file with the bureau an application form for renewal of its approval to operate. The renewal application need only contain a description of any changes made by the institution since the time its last application was reviewed by the council. Fees for processing the renewal application shall be based on the number and types of changes it contains. The renewal application may be reviewed and acted upon as provided in Sections 94802, 94804, and 94835, and Section 94900 or 94915, whichever is applicable.

SEC. 6. Section 94877 of the Education Code is amended to read:

94877. (a) If an institution violates this article or Section 94832 or commits an act as set forth in Section 94830 in connection with an agreement for a course of instruction, that agreement shall be unenforceable, and the institution shall refund all consideration paid by or on behalf of the student.

(b) Notwithstanding any provision in an agreement, a student may bring an action for a violation of this article or Section 94832 or an institution's failure to perform its legal obligations and, upon prevailing, shall be entitled to the recovery of damages, equitable relief, any other relief authorized by this article, and reasonable attorney's fees and costs.

(c) If a court finds that a violation was willfully committed or that the institution failed to refund all consideration as required by subdivision (a) on the student's written demand, the court, in addition to the relief awarded under subdivision (b), shall award a civil penalty of up to two times the amount of the damages sustained by the student.

(d) The remedies provided in this article supplement, but do not supplant, the remedies provided under other provisions of law.

(e) An action brought under this section shall be commenced within three years of the discovery of the facts constituting grounds for commencing the action.

(f) Any provision in any agreement that purports to require a student to invoke any grievance dispute procedure established by the institution or any other procedure before bringing an action to enforce any right or remedy is void and unenforceable.

(g) A student may assign his or her causes of action for a violation of this article to the bureau, or to any state or federal agency that guaranteed or reinsured a loan for the student or provided any grant or other financial aid.

(h) This section applies to any action pending under former Chapter 7 (commencing with Section 94700) on January 1, 1990.

(i) If a student commences an action or asserts any claim in an existing action for recovery on behalf of a class of persons, or on behalf of the general public, under Section 17200 of the Business and Professions Code, the student shall notify the bureau of the existence of the lawsuit, the court in which the action is pending, the case number of the action, and the date of the filing of the action or of the assertion of the claim. The student shall notify the bureau as required by this subdivision within 30 days of the filing of the action or of the first assertion of the claim, whichever is later. The student shall also notify the court that he or she has notified the bureau pursuant to this subdivision. Notwithstanding any other provision of law, no judgment may be entered pursuant to this section until the student has notified the bureau of the suit and notified the court that the bureau has been notified. This subdivision only applies to a new action filed or to a new claim asserted on or after January 1, 2002.

SEC. 7. Section 94944 of the Education Code is amended to read:

94944. (a) The Student Tuition Recovery Fund is continued in existence. All assessments collected pursuant Section 94945 shall be credited to this fund, along with any interest on the money, for the administration of this article. Notwithstanding Section 13340 of the Government Code, the money in the fund is continuously appropriated to the bureau without regard to fiscal years for the purposes of this chapter. The fund shall consist of a degree-granting postsecondary educational institution account, a vocational educational institution account, and an account for institutions approved under any provision of this chapter that charge each enrolled student a total charge, as defined in subdivision (k) of Section 94852, of less than one thousand dollars ($1,000), for the purpose of relieving or mitigating pecuniary losses suffered by any California resident who is a student of an approved institution and who meets either of the following conditions:

(1) (A) The student was enrolled in an institution, prepaid tuition, and suffered loss as a result of any of the following:

(i) The closure of the institution.

(ii) The institution's failure to pay refunds or charges on behalf of a student to a third party for license fees or any other purposes, or to provide equipment or materials for which a charge was collected within 180 days before the closure of the institution.

(iii) The institution's failure to pay or reimburse loan proceeds under a federally guaranteed student loan program as required by law or to pay or reimburse proceeds received by the institution prior to closure in excess of tuition and other costs.

(iv) The institution's breach or anticipatory breach of the agreement for the course of instruction.

(v) A decline in the quality or value of the course of instruction within the 30-day period before the closure of the institution or, if the decline began before that period, the period of decline determined by the bureau.

(vi) The commission of a fraud by the institution during the solicitation or enrollment of, or during the program participation of, the student.

(B) For the purposes of this section, ''closure'' includes closure of a branch or satellite campus, the termination of either the correspondence or residence portion of a home study or correspondence course, and the termination of a course of instruction for some or all of the students enrolled in the course before the time these students were originally scheduled to complete it, or before a student who has been continuously enrolled in a course of instruction has been permitted to complete all the educational services and classes that comprise the course.

(2) The student obtained a judgment against the institution for any violation of this chapter, and the student certifies that the judgment cannot be collected after diligent collection efforts. A court judgment obtained under this paragraph shall be paid in accordance with paragraph (1) of subdivision (f), unless the judgment indicates that a lesser amount is due.

(b) Payments from the fund to any student shall be made from the appropriate account within the fund, as determined by the type of institution into which the student has paid his or her fees, and shall be subject to any regulations and conditions prescribed by the bureau.

(c) (1) (A) The institution shall provide to the bureau, at the time of the institution's closure, the names and addresses of persons who were students of an institution within 60 days prior to its closure, and shall notify these students, within 30 days of the institution's closure, of their rights under the fund and how to apply for payment. If the institution fails to comply with this subdivision, the bureau shall attempt to obtain the names and addresses of these students and shall notify them, within

90 days of the institution's closure, of their rights under the fund and how to apply for payment. This notice shall include the explanation and the claim form described in subparagraph (B).

(B) The bureau shall develop a form in English and Spanish fully explaining a student's rights, which shall be used by the institution or the bureau to comply with the requirements of subparagraph (A). The form shall include, or be accompanied by, a claim application and an explanation of how to complete the application.

(2) (A) If an institution fails to comply with paragraph (1), the bureau shall order the institution, or any person responsible for the failure to provide notice as required by paragraph (1), to reimburse the bureau for all reasonable costs and expenses incurred in notifying students as required in paragraph (1). In addition, the bureau may impose a penalty of up to five thousand dollars ($5,000) against the institution and any person found responsible for the failure to provide notice. The amount of the penalty shall be based on the degree of culpability and the ability to pay. Any order may impose joint and several liability. Before any order is made pursuant to this paragraph, the bureau shall provide written notice to the institution and any person from whom the bureau seeks recovery of the bureau's claim and of the right to request a hearing within 30 days of the service of the notice.

(B) If a hearing is not requested within 30 days of service of the notice, the bureau may order payment in the amount of the claim. If a hearing is requested, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply, and the bureau shall have all of the powers therein prescribed. Within 30 days after the effective date of the issuance of an order, the bureau may enforce the order in the same manner as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure. All penalties and reimbursements paid pursuant to this section shall be deposited in the Private Postsecondary and Vocational Education Administration Fund established pursuant to Section 94932 or any successor fund.

(d) (1) Students entitled to payment as provided in paragraph (1) of subdivision (a) shall file with the bureau a verified application indicating each of the following:

(A) The student's name, address, telephone number, and social security number.

(B) If any portion of the tuition was paid from the proceeds of a loan, the name of the lender, and any state or federal agency that guaranteed or reinsured the loan.

(C) The amount of the paid tuition, the amount and description of the student's loss, and the amount of the student's claim.

(D) The date the student started and ceased attending the institution.

(E) A description of the reasons the student ceased attending the institution.

(F) If the student ceased attending because of a breach or anticipatory breach or because of the decline in the quality or value of the course of instruction as described in clause (v) of subparagraph (A) of paragraph (1) of subdivision (a), a statement describing in detail the nature of the loss incurred. The application shall be filed within one year from the date of the notice, as described in paragraph (1) of subdivision (c). If no notice is received by the student from the bureau soon after the school closes, the application shall be filed within four years of the institution's closure, or within two years of the student's or former student's receipt of an explanation of his or her rights and a claim form, whichever of those claim periods expires later. The two-year claim period shall begin on the day the student or former student receives from the bureau both an explanation regarding how to file a claim and a claim application, as provided in subparagraph (B) of paragraph (1) of subdivision (c), or on the day the second of the two documents is received, if they are received on different dates. If the claimant's primary language is Spanish, the notice and explanation shall be sent in Spanish.

(G) Nothing in this subdivision shall preclude the filing of a single, unified application that aggregates the claims of similarly situated students.

(2) (A) Students entitled to payment as provided in paragraph (2) of subdivision (a) shall file with the bureau a verified application indicating the student's name, address, telephone number, and social security number, the amount of the judgment obtained against the institution, a statement that the judgment cannot be collected, and a description of the efforts attempted to enforce the judgment. The application shall be accompanied by a copy of the judgment and any other documents indicating the student's efforts made to enforce the judgment.

(B) The application shall be filed within two years after the date upon which the judgment became final.

(3) The bureau may require additional information designed to facilitate payment to entitled students. The bureau shall waive the requirement that a student provide all of the information required by this subdivision if the bureau has the information or the information is not reasonably necessary for the resolution of a student's claim.

(4) Nothing in this subdivision shall be construed to preclude the filing of a single, unified application that aggregates the claims of similarly situated students.

(e) Within 60 days of the bureau's receipt of a completed application for payment, the bureau shall pay the claim from the Student Tuition Recovery Fund or deny the claim. The bureau, for good cause, may

extend the time period for up to an additional 90 days to investigate the accuracy of the claim.

(f) (1) If the bureau pays the claim, the amount of the payment shall be (A) the greater of either (i) the total guaranteed student loan debt incurred by the student in connection with attending the institution, or (ii) the total of the student's tuition and the cost of equipment and materials related to the course of instruction, less (B) the amount of any refund, reimbursement, indemnification, restitution, compensatory damages, settlement, debt forgiveness, discharge, cancellation, or compromise, or any other benefit received by, or on behalf of, the student before the bureau's payment of the claim in connection with the student loan debt or cost of tuition, equipment, and materials. The payment also shall include the amount the institution collected and failed to pay to third parties on behalf of the student for license fees or any other purpose. However, if the claim is based solely on the circumstances described in subparagraph (B) or (C) of paragraph (1) of subdivision (a), the amount of the payment shall be the amount of the loss suffered by the student. In addition to the amount determined under this paragraph, the amount of the payment shall include all interest and collection costs on all student loan debt incurred by the student in connection with attending the institution.

(2) The bureau may reduce the total amount specified in paragraph (1) by the value of the benefit, if any, of the education obtained by the student before the closure of the institution. If the bureau makes any reduction pursuant to this paragraph, the bureau shall notify the claimant in writing at the time the claim is paid of the basis of its decision and provide a brief explanation of the reasons upon which the bureau relied in computing the amount of the reduction.

(3) No reduction shall be made to the amount specified in paragraph (1) if (A) the student did not receive adequate instruction to obtain the training, skills, or experience, or employment to which the instruction was represented to lead, (B) credit for the instruction obtained by the student is not generally transferable to other institutions approved by the bureau, or (C) the institution or one of its representatives fraudulently misrepresented to students the likely starting salary or job availability, or both, after training.

(4) The amount of the payment determined under this subdivision is not dependent on the amount of the refund to which the student would have been entitled after a voluntary withdrawal.

(5) Upon payment of the claim, all of the student's rights against the institution shall be deemed assigned to the bureau to the extent of the amount of the payment.

(g) (1) The bureau shall negotiate with a lender, holder, guarantee agency, or the United States Department of Education for the full

compromise or writeoff of student loan obligations to relieve students of loss and thereby reduce the amount of student claims.

(2) The bureau, with the student's permission, may pay a student's claim directly to the lender, holder, guarantee agency, or the United States Department of Education under a federally guaranteed student loan program only if the payment of the claim fully satisfies all of the student's loan obligations related to attendance at the institution for which the claim was filed.

(3) Notwithstanding subdivision (e), the bureau may delay the payment of a claim pending the resolution of the bureau's attempt to obtain a compromise or writeoff of the claimant's student loan obligation. However, the bureau shall immediately pay the claim if any adverse action that is not stayed is taken against the claimant, including the commencement of a civil or administrative action, tax offset, the enforcement of a judgment, or the denial of any government benefit.

(4) The bureau shall make every reasonable effort to obtain a loan discharge for an eligible student in lieu of reimbursing that student in whole or in part from the fund pursuant to federal student loan laws and regulations.

(5) Whenever the bureau receives from a student a completed application for payment from the Student Tuition Recovery Fund, the bureau shall, as soon as is practicable, cause to be delivered to that student a written notice specifying, in plain English, the rights of a student under this section.

(h) (1) If the bureau denies the claim, or reduces the amount of the claim pursuant to paragraph (2) of subdivision (f), the bureau shall notify the student of the denial or reduction and of the student's right to request a hearing within 60 days or any longer period permitted by the bureau. If a hearing is not requested within 60 days or any additional period reasonably requested by the student, the bureau's decision shall be final. If a hearing is requested, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply.

(2) It is the intent of the Legislature that, when a student is enrolled in an institution that closes prior to the completion of the student's program, the student shall have the option for a teach-out at another institution approved by the bureau. The bureau shall seek to promote teach-out opportunities wherever possible and shall inform the student of his or her rights, including payment from the fund, transfer opportunities, and available teach-out opportunities, if any.

(i) This section applies to all claims filed or pending under former Chapter 7 (commencing with Section 94700) after January 1, 1990.

(j) Once the bureau has determined that a student claim is eligible for payment under this section and intends to use the Student Tuition Recovery Fund, in whole or in part, to satisfy the eligible claim, the

bureau shall document its negotiations with the relevant lender, holder or guarantee agency, the United States Department of Education, or the applicable state agency. The bureau shall prepare a written summary of the parties and results of the negotiations, including the amounts offered and accepted, the discounts requested and granted, and any other information that is available to any party that files a request for this information with the bureau.

SEC. 8. Section 94945 of the Education Code is amended to read:

94945. (a) The bureau shall assess each institution, except for an institution that receives all of its students' total charges, as defined in subdivision (k) of Section 94852, from third-party payers. A third-party payer, for the purposes of this section, means an employer, government program, or other payer that pays a student's total charges directly to the institution when no separate agreement for the repayment of that payment exists between the third-party payer and the student. A student who receives third-party payer benefits for his or her institutional charges is not eligible for benefits from the Student Tuition Recovery Fund.

(1) The amount assessed each institution shall be calculated only for those students who are California residents and who are eligible to be reimbursed from the fund. It shall be based on the actual amount charged each of these students for total tuition cost, regardless of the portion that is prepaid. The amount of the assessment on an institution shall be determined in accordance with paragraph (2) and (3). Each institution shall collect the amount assessed by the bureau in the form of a Student Tuition Recovery Fund fee from its new students, and remit these fees to the bureau during the quarter immediately following the quarter in which the fees were collected from the students. An institution may not charge a fee of any kind for the collection of the Student Tuition Recovery Fund fee. An institution may refuse to enroll a student who has not paid, or made provisions to pay, the appropriate Student Tuition Recovery Fund fee.

(2) The amount collected from a new student by an institution shall be calculated on the basis of the course tuition paid over the current calendar year. For purposes of annualized payment, a new student enrolled in a course of instruction that is longer than one calendar year in duration shall pay fees for the Student Tuition Recovery Fund based on the amount of tuition collected during the current calendar year.

(3) The assessment made pursuant to this section shall be made in accordance with both of the following:

(A) Each new student shall pay a Student Tuition Recovery Fund assessment for the period of January 1, 2002, to December 31, 2002, inclusive, at the rate of three dollars ($3) per thousand dollars of tuition paid, rounded to the nearest thousand dollars.

(B) Commencing January 1, 2003, Student Tuition Recovery Fund fees shall be collected from new students at the rate of two dollars and fifty cents ($2.50) per thousand dollars of tuition paid, rounded to the nearest thousand dollars.

(4) The bureau may levy additional reasonable special assessments on an institution under this section only if these assessments are required to ensure that sufficient funds are available to satisfy the anticipated costs of paying student claims pursuant to Section 94944.

(5) (A) The bureau may not levy a special assessment unless the balance in any account in the Student Tuition Recovery Fund falls below two hundred fifty thousand dollars ($250,000), as certified by the Secretary of the State and Consumer Services Agency.

(B) A special assessment is a surcharge, collected by each institution from newly enrolled students, of up to 100 percent of that institution's regular assessment for four consecutive quarters. The affected student shall pay the surcharge simultaneously with his or her regular quarterly payment to the Student Tuition Recovery Fund.

(C) The bureau shall provide at least 90 days' notice of an impending special assessment to each affected institution. This notice shall also be posted on the bureau's Internet Web site.

(D) The bureau may apply any special assessment payments that it receives from an institution as a credit toward that institution's current or future obligations to the Student Tuition Recovery Fund.

(6) The assessments shall be paid into the Student Tuition Recovery Fund and credited to the appropriate account in the fund, and the deposits shall be allocated, except as otherwise provided for in this chapter, solely for the payment of valid claims to students. Unless additional reasonable assessments are required, no assessments for the degree-granting postsecondary educational institution account shall be levied during any fiscal year if, as of June 30 of the prior fiscal year, the balance in that account of the fund exceeds one million five hundred thousand dollars ($1,500,000). Unless additional reasonable assessments are required, no assessments for the vocational educational institution account shall be levied during any fiscal year if, as of June 30 of the prior fiscal year, the balance in that account exceeds four million five hundred thousand dollars ($4,500,000). However, regardless of the balance in the fund, assessments shall be made on any newly approved institution. Notwithstanding Section 13340 of the Government Code, the moneys so deposited in the fund are continuously appropriated to the bureau for the purpose of paying claims to students pursuant to Section 94944.

(b) The bureau may deduct from the fund the reasonable costs of administration of the tuition recovery program authorized by Section 94944 and this section. The maximum amount of administrative costs that may be deducted from the fund, in a fiscal year, shall not exceed one

hundred thousand dollars ($100,000) from the degree-granting postsecondary educational institution account and three hundred thousand dollars ($300,000) from the vocational educational institution account, plus the interest earned on money in the fund that is credited to the fund. Prior to the bureau's expenditure of any amount in excess of one hundred thousand dollars ($100,000) from the fund for administration of the tuition recovery program, the bureau shall develop a plan itemizing that expenditure. The plan shall be subject to the approval of the Department of Finance. Institutions, except for schools of cosmetology licensed pursuant to Article 8 (commencing with Section 7362) of Chapter 10 of Division 3 of the Business and Professions Code and institutions that offer vocational or job training programs, that meet the student tuition indemnification requirements of a California state agency, that secure a policy of surety or insurance from an admitted insurer protecting their students against loss of paid tuition, or that demonstrate to the bureau that an acceptable alternative method of protecting their students against loss of prepaid tuition has been established, shall be exempted from this section.

(c) Reasonable costs in addition to those permitted under subdivision (b) may be deducted from the fund for any of the following purposes:

(1) To make and maintain copies of student records from institutions that close.

(2) To reimburse the bureau or a third party serving as the custodian of records.

(d) In the event of a closure by any approved institution under this chapter, any assessments that have been made against those institutions, but have not been paid into the fund, shall be recovered. Any payments from the fund made to students on behalf of any institution shall be recovered from that institution.

(e) In addition to civil remedies, the bureau may order an institution to pay previously unpaid assessments or to reimburse the bureau for any payments made from the fund in connection with the institution. Before any order is made pursuant to this section, the bureau shall provide written notice to the institution and notice of the institution's right to request a hearing within 30 days of the service of the notice. If a hearing is not requested within 30 days of the service of the notice, the bureau may order payment. If a hearing is requested, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply, and the bureau shall have all powers prescribed in that chapter. Within 30 days after the effective date of the issuance of the order, the bureau may enforce the order in the same manner as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

(f) In addition to any other action that the bureau may take under this chapter, the bureau may suspend or revoke an institution's approval to operate because of the institution's failure to pay assessments when due or failure to pay reimbursement for any payments made from the fund within 30 days of the bureau's demand for payment.

(g) The moneys deposited in the fund shall be exempt from execution and shall not be the subject of litigation or liability on the part of creditors of those institutions or students.

SEC. 9. Section 94960 of the Education Code is amended to read:

94960. (a) Any person claiming damage or loss as a result of any act or practice by a postsecondary or vocational educational institution or its agent, or both, that is a violation of this chapter or of the regulations adopted pursuant to this chapter, may file with the bureau a verified complaint against that institution or its agent, or both.

The complaint shall set forth the alleged violation, and shall contain any other information as may be required by the bureau.

(b) (1) Pursuant to regulations that specify its procedures regarding complaint handling and disclosure, the bureau shall investigate any complaint, and document its findings and its determination of the appropriate course of action and disposition of the complaint.

(2) The bureau shall adopt regulations that specify its procedures for complaint handling and complaint disclosure. The bureau shall make every reasonable attempt to ensure that the first public hearing on its proposed regulations is convened prior to June 30, 2002. The requirements of this subdivision shall not preclude the bureau from fulfilling its complaint handling responsibilities pending adoption of the regulations.

(3) The regulations adopted pursuant to paragraph (2) shall include, but not necessarily be limited to, both of the following:

(A) A procedure for handling the original student complaints by mail that affords the institution that is the subject of the complaint an opportunity to respond.

(B) Additional options, including teleconferencing and an administrative law hearing and a complaint resolution hearing conducted by the bureau program administrator or his or her designee. Participation in this hearing shall not prevent any party to the complaint from exercising any other means of redress available under the law.

(4) Nothing in this section shall be construed to prevent a complainant, institution, or the bureau from using additional appeals that are available under state law.

(c) If, upon all the evidence at a hearing, the bureau finds that an institution or its agent, or both, have engaged in, or are engaging in, any act or practice that violates this chapter or the regulations adopted pursuant to this chapter, the bureau shall report that evidence to the

Attorney General. The bureau, based on its own investigation or the evidence adduced at a hearing, or both, also may commence an action to revoke an institution's approval to operate or an agent's permit.

(d) Complaints received by the bureau pertaining to institutions accredited by the Western Association of Schools and Colleges shall be forwarded to the association. Actions by the bureau relating to complaints against these institutions shall be limited to the transmittal of this information.

(e) A person entitled to bring an action for the recovery of damages or other relief shall not be required to file a complaint pursuant to this section, or to pursue or exhaust any administrative process or remedy before bringing the action.

SEC. 10. Section 94985 of the Education Code is amended to read:

94985. (a) Any institution that willfully violates any provision of Section 94800, 94810, 94814, or 94816, Sections 94820 to 94826, inclusive, Section 94829, 94831, or 94832 may not enforce any contract or agreement arising from the transaction in which the violation occurred, and any willful violation is a ground for revoking an approval to operate in this state or for denying a renewal application.

(b) Any person who claims that an institution is operating in violation of subdivision (a) of Section 94831, subdivision (a) of Section 94900, or Section 94915, or an institution is operating a branch or satellite campus in violation of subdivision (a) of Section 94857, may bring an action, in a court of competent jurisdiction, for the recovery of actual and or statutory damages as well as an equity proceeding to restrain and enjoin those violations, or both.

(1) At least 35 days prior to the commencement of an action pursuant to this subdivision, the plaintiff shall do all of the following:

(A) Notify the institution alleged to have violated subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, of the particular alleged violations.

(B) Demand that the institution apply for the bureau's approval to operate as required by subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, whichever is applicable.

(C) The notice shall be in writing, and shall be sent by regular mail and certified or registered mail, return receipt requested, to the location of the institution that is allegedly operating in violation of subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, whichever is applicable.

(D) The institution shall have 30 working days, from receipt of the notice, to file an application for approval to operate with the bureau.

(E) No action pursuant to this subdivision may be filed if the institution, within 30 working days after receipt of the notice, applies for

the bureau's approval to operate as required by subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, whichever is applicable.

(F) If, within 35 days after receipt of the notice, the bureau has not received an application from the institution, the bureau shall mail the plaintiff a certification that the institution has not applied or been approved to operate pursuant to subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, whichever is applicable.

(G) The plaintiff shall also notify the bureau by mail and by certified or registered mail, return receipt requested, that he or she intends to bring an action pursuant to this section against the institution. Upon receipt of this notice, the bureau shall immediately investigate the institution's compliance with subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, whichever is applicable, and, if the bureau determines that the institution has violated the applicable section, the bureau shall immediately order the institution to cease and desist operations. For each day that the institution continues to operate in violation of the bureau's cease and desist order, the institution shall be fined one thousand dollars ($1,000).

(2) If the court finds that the institution has violated subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, all of the following shall occur:

(A) The court shall order the institution to cease all operations and to comply with all procedures set forth in this code pertaining to the closure of institutions.

(B) The court shall order the institution to pay all students who enrolled while the school was in violation of subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857 a refund of all tuition and fees paid to the institution and a statutory penalty of one thousand dollars ($1,000).

(C) The court shall order the institution to pay the prevailing party's attorneys' fees and costs.

(D) The court shall order the institution to pay to the bureau all fines incurred pursuant to subparagraph (E) of paragraph (1).

(E) Any instrument of indebtedness, enrollment agreement, or contract for educational services is unenforceable pursuant to Section 94838. The court shall order the institution to mail a notice to all students who were enrolled while the school was in violation of subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, stating that instruments of indebtedness, enrollment agreements, and contracts for educational services are not enforceable. If the institution fails to provide adequate proof to the court and to the bureau that it has mailed this notice within

30 days of the court's order, the bureau shall mail the notice to the students and the court shall order the institution to pay the bureau's costs of generating and mailing the notices, in no case less than five thousand dollars ($5,000).

(3) Any violation of subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, and subdivision (a) of Section 94857 shall constitute an unfair business practice within the meaning of Section 17200 of the Business and Professions Code.

(4) A certification, issued by the bureau, that the institution has not applied for approval to operate and has not been approved to operate as required by subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, whichever is applicable, shall establish a conclusive presumption that the institution has violated this subdivision.

(5) All fines and other monetary amounts that an institution is ordered to pay pursuant to this subdivision may be collected from the institution itself and from the individuals who own the institution, whether or not the institution is organized as a corporation.

(6) Notwithstanding any provision of the contract or agreement, a student may bring an action for a violation of this article or for an institution's failure to perform its legal obligations and, upon prevailing thereon, is entitled to the recovery of damages, equitable relief, or any other relief authorized by this article, and reasonable attorney's fees and costs.

(d) If a court finds that a violation was willfully committed or that the institution failed to refund all consideration as required by subdivision (b) on the student's written demand, the court, in addition to the relief authorized under subdivision (b), shall award a civil penalty of up to two times the amount of the damages sustained by the student.

(e) The remedies provided in this article supplement, but do not supplant, the remedies provided under any other provision of law.

(f) An action brought under this section shall be commenced within three years of the discovery of the facts constituting grounds for commencing the action.

(g) Any provision in any agreement that purports to require a student to invoke any grievance dispute procedure established by the institution before enforcing any right or remedy is void and unenforceable.

(h) A student may assign his or her cause of action for a violation of this article to the bureau, or to any state or federal agency that guaranteed or reinsured a loan for the student or that provided any grant or other financial aid.

(i) This section applies to any action pending on the effective date of this section.

(j) This section supplements, but does not supplant, the authority granted the Division of Labor Standards Enforcement under Chapter 4 (commencing with Section 79) of Division 1 of the Labor Code to the extent that placement activities of trade schools are subject to regulation by the division under the Labor Code.

(k) If a student commences an action or asserts any claim in an existing action for recovery on behalf of a class of persons, or on behalf of the general public, under Section 17200 of the Business and Professions Code, the student shall notify the bureau of the existence of the lawsuit, the court in which the action is pending, the case number of the action, and the date of the filing of the action or of the assertion of the claim. The student shall notify the bureau as required by this subdivision within 30 days of the filing of the action or of the first assertion of the claim, whichever is later. The student shall also notify the court that he or she has notified the bureau pursuant to this subdivision. Notwithstanding any other provision of law, no judgment may be entered pursuant to this section until the student has notified the bureau of the suit and notified the court that the bureau has been notified. This subdivision only applies to a new action filed or to a new claim asserted on or after January 1, 2002.

SEC. 11. Section 94995.3 is added to the Education Code, to read:

94995.3. The Bureau for Private Postsecondary and Vocational Education shall submit an annual report on the collection and expenditure of moneys collected as special assessments pursuant to the act adding this section. The bureau shall submit copies of this report to the chairpersons of the Assembly Committee on Higher Education, the Senate Committee on Education, the Senate Committee on Business and Professions, the Assembly Committee on Budget, and the Senate Committee on Budget and Fiscal Review. The report required by this section may be incorporated in the bureau's annual report to the Legislature.

CHAPTER 622

An act to add Section 1363.03 to the Health and Safety Code, and to add Section 10123.194 to the Insurance Code, relating to health insurance.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 1363.03 is added to the Health and Safety Code, to read:

1363.03. (a) Every health care service plan that covers prescription drug benefits and that issues a card to enrollees for claims processing purposes shall issue to each of its enrollees a uniform card containing uniform prescription drug information. The uniform prescription drug information card shall, at a minimum, include the following information:

(1) The name or logo of the benefit administrator or health care service plan issuing the card, which shall be displayed on the front side of the card.

(2) The enrollee's identification number, or the subscriber's identification number when the enrollee is a dependent who accesses services using the subscriber's identification number, which shall be displayed on the front side of the card.

(3) A telephone number that pharmacy providers may call for assistance.

(4) Information required by the benefit administrator or health care service plan that is necessary to commence processing the pharmacy claim, except as provided for in paragraph (5).

(5) A health care service plan shall not be required to print any of the following information on a member card:

(A) Any number that is the same for all of its members, provided that the health care service plan provides this number to the pharmacy on an annual basis.

(B) Any information that may result in fraudulent use of the card.

(C) Any information that is otherwise prohibited from being included on the card.

(b) Beginning July 1, 2002, the new uniform prescription drug information card required by subdivision (a) shall be issued by a health care service plan to an enrollee upon enrollment or upon any change in the enrollee's coverage that impacts the data content or format of the card.

(c) Nothing in this section requires a health care service plan to issue a separate card for prescription drug coverage if the plan issues a card for health care coverage in general and the card is able to accommodate the information required by subdivision (a).

(d) This bill shall not apply to a nonprofit health care service plan with at least 3.5 million enrollees that owns or operates its own pharmacies and that provides health care services to enrollees in a specific geographic area through a mutually exclusive contract with a single medical group.

(e) ''Card'' as used in this section includes other technology that performs substantially the same function as a card.

(f) For purposes of this section, if a health care service plan delegates responsibility for issuing the uniform prescription drug information card to a contractor or agent, then the contract between the health care service plan and its contractor or agent shall require compliance with this section.

SEC. 2. Section 10123.194 is added to the Insurance Code, to read:

10123.194. (a) Every disability insurer that covers hospital, medical, or surgical expenses, and, as part of that coverage, also covers prescription drug benefits, and that issues a card to insureds for claims processing purposes, shall issue to each of its insureds a uniform card containing uniform prescription drug information. The uniform prescription drug information card shall, at a minimum, include the following information:

(1) The name or logo of the benefit administrator or disability insurer issuing the card, which shall be displayed on the front side of the card.

(2) The insured's identification number, or the policyholder's identification number when the insured is a dependent who accesses services using the policy holder's identification number, which shall be displayed on the front side of the card.

(3) A telephone number that pharmacy providers may call for assistance.

(4) Information required by the benefit administrator or disability insurer that is necessary to commence processing the pharmacy claim, except as provided for in paragraph (5).

(5) A disability insurer shall not be required to print any of the following information on an insured's card:

(A) Any number that is the same for all of its insured, provided that the disability insurer provides this number to the pharmacy on an annual basis.

(B) Any information that may result in fraudulent use of the card.

(C) Any information that is otherwise prohibited from being included on the card.

(b) Beginning July 1, 2002, the new uniform prescription drug information card required by subdivision (a) shall be issued by an insurer to an insured upon enrollment or upon any change in the insured's coverage that impacts the data content or format of the card.

(c) Nothing in this section requires an insurer to issue a separate card for prescription drug coverage if the insurer issues a card for health care coverage in general and the card is able to accommodate the information required by subdivision (a).

(d) ''Card'' as used in this section includes other technology that performs substantially the same function as a card.

(e) For purposes of this section, if a disability insurer delegates responsibility for issuing the uniform prescription drug information card to a contractor or agent, then the contract between the disability insurer and its contractor or agent shall require compliance with 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.

CHAPTER 623

An act to amend Sections 17276, 17276.1, 24416, and 24416.1 of, and to add Sections 17276.7 and 24416.7, to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 17276 of the Revenue and Taxation Code is amended to read:

17276. Except as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7, 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 the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) Sixty-five percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any 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 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 subdivision (d).

(ii) With respect to the portion of the net operating loss which exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(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 any 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 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 as provided in subdivision (d).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(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) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, 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'' except as otherwise provided in paragraphs (2) and (3).

(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, 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 ''10 taxable years'' in lieu of ''20 taxable years.''

(2) For any taxable year beginning before January 1, 2000, 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 to the contrary, a deduction shall be allowed to a ''qualified taxpayer'' as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7.

(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) Except as otherwise provided, the amendments made by the act adding this subdivision shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 2. 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, 17276.6, or 17276.7, 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, 17276.6, or 17276.7, 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. 3. Section 17276.7 is added to the Revenue and Taxation Code, to read:

17276.7. (a) The term ''qualified taxpayer'' as used in Section 17276.1 includes a person or entity that conducts a farming business that is directly affected by Pierce's disease and its vectors. 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 farming business is affected by Pierce's disease and its vectors shall be a net operating loss carryover to each of the nine taxable years following the taxable year of loss, until used.

(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 farming business activities affected by Pierce's disease and its vectors. 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) A loss shall be apportioned to the area affected by Pierce's disease and its vectors by multiplying the total loss from the farming 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 area affected by Pierce's disease and its vectors'' shall be substituted for ''this state.''

(B) A net operating loss carryover computed under this section shall be allowed as a deduction only with respect to the taxpayer's farming business income attributable to the area affected by Pierce's disease and its vectors.

(C) Attributable income is that portion of the taxpayer's California source farming business income that is apportioned to the area affected by Pierce's disease and its vectors. For that purpose, that taxpayer's farming 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 farming business income shall be further apportioned to the area affected by Pierce's disease and its vectors in

accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this subdivision as follows:

(i) Farming business income shall be apportioned to the area affected by Pierce's disease and its vectors by multiplying the total California farming 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:

(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 area affected by Pierce's disease and its vectors 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 area affected by Pierce's disease and its vectors 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 Pierce's disease and its vectors have occurred, the area affected by Pierce's disease and its vectors 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.

(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 compute its net operating loss under this section and either Section 17276.2, 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 17276.2, 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.

(e) (1) A qualified taxpayer may utilize the net operating loss carryover allowed by this section only if the Department of Food and Agriculture determines that Pierce's disease and its vectors caused the

net operating loss for which the qualified taxpayer seeks a deduction under this section.

(2) To make the determination required by this subdivision, the Department of Food and Agriculture shall utilize the definitions in Title 3 of the California Code of Regulations, relating to Pierce's disease and its vectors.

(3) The Department of Food and Agriculture may prescribe regulations necessary to implement this subdivision.

(f) This section applies to net operating losses attributable to taxable years beginning on or after January 1, 2001, and before January 1, 2003.

SEC. 4. Section 24416 of the Revenue and Taxation Code is amended to read:

24416. Except as provided in Sections 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7, 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 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 the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) Sixty-five percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any 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 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 subdivision (e).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(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 any 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 (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 as provided in subdivision (e).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (e).

(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 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 taxable 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 taxable year in which the loss was incurred.

(d) Net operating loss carrybacks shall not be allowed.

(e) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, 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 years'' except as otherwise provided in paragraphs (2), (3), and (4).

(B) For a net operating loss for any income year beginning on or after January 1, 2000, 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 ''10 taxable years'' in lieu of ''20 taxable years.''

(2) For any income year beginning before January 1, 2000, in the case of a ''new business,'' the ''five taxable years'' referred to 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 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 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 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 taxable 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 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 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.

(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 taxable year which may be carried forward to another taxable year.

(2) The amount of any loss carry forward which may be deducted in any taxable 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*) Except as otherwise provided, the amendments made by the act adding this subdivision shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 5. 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, 24416.6, or 24416.7, 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, 24416.6, or 24416.7, 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. 6. Section 24416.7 is added to the Revenue and Taxation Code, to read:

24416.7. (a) The term ''qualified taxpayer'' as used in Section 24416.1 includes a corporation that conducts a farming business that is directly affected by Pierce's disease and its vectors. 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 farming business is affected by Pierce's disease and its vectors shall be a net operating loss carryover to each of the nine taxable years following the taxable year of loss, until used.

(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 farming business activities affected by Pierce's disease and its vectors. 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) A loss shall be apportioned to the area affected by Pierce's disease and its vectors by multiplying the total loss from the farming 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 area affected by Pierce's disease and its vectors'' shall be substituted for ''this state.''

(B) A net operating loss carryover computed under this section shall be allowed as a deduction only with respect to the taxpayer's farming business income attributable to the area affected by Pierce's disease and its vectors.

(C) Attributable income is that portion of the taxpayer's California source farming business income that is apportioned to the area affected by Pierce's disease and its vectors. For that purpose, that taxpayer's farming 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 farming business income shall be further apportioned to the area affected by Pierce's disease and its vectors in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this subdivision as follows:

(i) Farming business income shall be apportioned to the area affected by Pierce's disease and its vectors by multiplying the total California farming 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:

(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 area affected by Pierce's disease and its vectors 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 area affected by Pierce's disease and its vectors 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 Pierce's disease and its vectors occurred, the area affected by Pierce's disease and its vectors 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.

(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 compute its net operating loss under this section and either Section 24416.2, 24416.4, 24416.5, or 24416.6 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 24416, the amount of the loss determined under this section or Section 24416.2, 24416.4, 24416.5, or 24416.6 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 24416.1.

(e) (1) A qualified taxpayer may utilize the net operating loss carryover allowed by this section only if the Department of Food and Agriculture determines that Pierce's disease and its vectors caused the net operating loss for which the qualified taxpayer seeks a deduction under this section.

(2) To make the determination required by this subdivision, the Department of Food and Agriculture shall utilize the definitions in Title 3 of the California Code of Regulations, relating to Pierce's disease and its vectors.

(3) The Department of Food and Agriculture may prescribe regulations necessary to implement this subdivision.

(f) This section applies to net operating losses attributable to taxable years beginning on or after January 1, 2001, and before January 1, 2003.

SEC. 7. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 624

An act to amend Sections 10134, 10135, 10136, 10137, 10138, and 10139 of, to add Sections 10139.3 and 10139.4 to, and to add and repeal Sections 10139.1 and 10139.5 of, the Insurance Code, relating to structured settlements.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 10134 of the Insurance Code is amended to read:

10134. For the purposes of this article, the following terms have the following meanings:

(a) ''Buyer's first right of refusal'' means any provision in the transfer agreement or related documents that obligate the payee to give to the buyer the first choice or option to purchase any remaining structured settlement rights belonging to the payee.

(b) ''Dependents'' include the payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony.

(c) ''Discounted present value'' means the fair present value of future payments, as determined by discounting those payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

(d) ''Effective equivalent interest rate,'' with respect to a transfer of structured settlement payment rights, means the annualized rate of interest on the net advance amount, calculated by treating the transferred structured settlement payments as if they were installment payments on a loan, with each payment applied first to accrued unpaid interest and then to principal.

(e) ''Expenses'' means all broker's commissions, service charges, application or processing fees, closing costs, filing or administrative charges, legal fees, notary fees and other commissions, fees, costs, and charges that a payee would have to pay to transfer the structured settlement payment rights of a structured settlement agreement or that would be deducted from the gross consideration that would be paid to the payee in connection with the transfer of the structured settlement payment rights of a structured settlement agreement.

(f) ''Independent professional advice'' means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser meeting all of the following requirements:

(1) The adviser is engaged by a claimant or payee to render advice concerning the legal, tax, or financial implications of a structured settlement or a transfer of structured settlement payment rights.

(2) The adviser's compensation for rendering independent professional advice is not affected by occurrence or lack of occurrence of a settlement or transfer.

(3) A particular adviser is not referred to the payee by the transferee or its agent, except that the transferee may refer the payee to a lawyer referral service or agency operated by a state or local bar association.

(g) ''Interested parties'' means, with respect to a structured settlement agreement, the payee, the payee's attorney, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and

any other party who has continuing rights or obligations under the structured settlement agreement. If the designated beneficiary is a minor, the beneficiary's parent or guardian shall be an interested party.

(h) ''Payee'' means an individual who received tax-free payments pursuant to a structured settlement agreement.

(i) ''Qualified assignment agreement'' means an agreement providing for a qualified assignment within the meaning of Section 130 of Title 26 of the United States Code, as amended from time to time.

(j) ''Structured settlement agreement'' means an arrangement for periodic payment of damages established by settlement or judgment in resolution of a tort claim in which the payment of the judgment or award is paid in whole, or in part, in periodic tax-free payments rather than a lump-sum payment. A structured settlement agreement entered into pursuant to Section 667.7 of the Code of Civil Procedure or Section 970.6 or 984 of the Government Code is not subject to the provisions of this article other than the requirements of Section 10138.

(k) ''Structured settlement obligor'' means the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

(*l*) ''Structured settlement payment rights'' means rights to receive periodic payments, including lump-sum payments, pursuant to a structured settlement agreement, whether from the settlement obligor or an annuity issuer.

(m) ''Terms of the structured settlement'' include, with respect to a structured settlement agreement, the terms of the structured settlement agreement, annuity contract, qualified assignment agreement, and any order or approval of a court or responsible administrative authority or other governmental authority authorizing or approving the structured settlement.

(n) ''Transfer'' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made for consideration.

(o) ''Transfer agreement'' means the agreement providing for the transfer, and any other document used to effectuate the transfer, from the payee to the transferee of structured settlement payment rights of a structured settlement agreement.

(p) ''Transferee'' means any person receiving structured settlement payment rights resulting from a transfer.

SEC. 2. Section 10135 of the Insurance Code is amended to read:

10135. (a) This article is only applicable to transfers entered into on or after January 1, 2000.

(b) Notwithstanding subdivision (a), the changes to this article made by the act amending this section in the 2001–02 Regular Session shall only be applicable to transfers entered into on or after January 1, 2002.

SEC. 3. Section 10136 of the Insurance Code is amended to read:

10136. No transfer of structured settlement payment rights, either directly or indirectly, shall be effective by a payee domiciled in this state, or by a payee entitled to receive payments under a structured settlement funded by an insurance contract issued by an insurer domiciled in this state or owned by an insurer or corporation domiciled in this state, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to a transferee, unless all of the following subdivisions are satisfied:

(a) Ten or more days prior to the effective date of a transfer agreement, the transferee provides the payee with a separate written disclosure statement, in at least 14-point boldface type, disclosing all of the following:

(1) The effective date of the transfer.

(2) The amounts and due dates of the structured settlement payments to be transferred.

(3) The aggregate amount of the structured settlement payments to be transferred.

(4) The gross amount of all expenses, if any, to be deducted from the amount to be paid to the payee in exchange for the payments to be transferred.

(5) The amount payable to the payee, net of all expenses, in exchange for the payments to be transferred.

(6) The discounted present value of all structured settlement payments to be transferred and the discount rate used in determining that discounted present value.

(7) The effective equivalent interest rate, which shall be disclosed in the following statement:

"YOU WILL BE PAYING THE EQUIVALENT TO AN INTEREST RATE OF ____ % PER YEAR.

Based on the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are transferring to us, if the transferred structured settlement payments were installment payments on a loan, with each payment applied first to accrued unpaid interest and then to principal, it would be as if you were paying interest to us of ____ % per year, assuming funding on the effective date of transfer."

(8) The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments.

(9) A statement that the payee should obtain independent professional advice regarding any federal and state income tax consequences arising from the proposed transfer, and that the transferee may not refer the payee to any specific adviser for that purpose.

(10) A statement of the payee's irrevocable and nonwaivable right of rescission pursuant to paragraph (2) of subdivision (b).

(11) The following statement in capital letters: "IF YOU BELIEVE YOU WERE TREATED UNFAIRLY OR WERE MISLED AS TO THE NATURE OF THE OBLIGATIONS YOU ASSUMED UPON ENTERING INTO THIS AGREEMENT, YOU SHOULD REPORT THOSE CIRCUMSTANCES TO YOUR LOCAL DISTRICT ATTORNEY OR THE OFFICE OF THE ATTORNEY GENERAL."

(12) If court approval of the transfer agreement is required, all of the following shall apply:

(A) The effective date of the transfer agreement shall be deemed to be the date that the agreement was signed by the payee.

(B) The payee shall be advised that payment to the payee pursuant to the transfer agreement is contingent upon court approval of the transfer agreement.

(C) The payee shall be advised that payment to the payee pursuant to the transfer agreement will be delayed up to 30 days or more in order for the court to review and approve the transfer agreement.

No contract for the transfer of structured settlement payment rights shall be valid unless the seller has separately acknowledged that he or she has read all of the disclosures required by this subdivision.

(b) (1) The transferee provides written notice of the proposed transfer to all other interested parties 10 or more days prior to the date specified in the transfer agreement as the date on which the transfer agreement first becomes binding upon the payee and 60 or more days prior to the date on which the first payment is due under a schedule established by the structured settlement agreement.

Notice shall not be required by this paragraph if court approval of the transfer is required and notice is given pursuant to paragraph (6) of subdivision (c) of Section 10139.5.

(2) At any time prior to the date on which the transfer agreement first becomes binding upon the payee, the payee may cancel the transfer agreement without cost or further obligation, by providing written notice of cancellation to the transferee.

(3) The notice to interested parties shall include the effective date of the transfer and identify the structured settlement payment rights being transferred and the due dates of those payments.

(4) Any notice required by this subdivision shall be deemed to have been given if addressed to the recipient's last known address and deposited, first-class postage prepaid, in the United States mail not less than five calendar days prior to the date on which the notice is required to be provided.

(c) The contract for transferring the structured settlement payment rights does not violate the provisions of Section 10138.

SEC. 4. Section 10137 of the Insurance Code is amended to read:

10137. A transfer of structured settlement payment rights is void unless all of the following conditions are met:

(a) The transfer of the structured settlement payment rights is fair and reasonable and in the best interest of the payee, taking into account the welfare and support of his or her dependents.

(b) The transfer complies with the requirements of this article and will not contravene other applicable law.

(c) Notice is given in compliance with subdivision (b) of Section 10136 or, when applicable, court approval of the transfer is required and notice is given pursuant to paragraph (6) of subdivision (c) of Section 10139.5.

SEC. 5. Section 10138 of the Insurance Code is amended to read:

10138. (a) A transfer agreement, as defined in subdivision (o) of Section 10134, shall not include any provision described in the paragraphs below. Any inclusion of a prohibited provision, with respect to a seller who is a California resident, shall make the contract void and unenforceable.

(1) Any provision that waives the seller's right to sue under any law, or in which the seller agrees not to sue, or that waives jurisdiction or standing to sue under the contract.

(2) Any provision that requires the seller to indemnify and hold harmless the buyer, or to pay the buyer's costs of defense, in any claim or action brought by the seller or on the seller's behalf contesting the sale for any reason.

(3) Any provision that waives benefits or rights conferred by law with respect to garnishment of wages.

(4) Any provision providing that the contract is confidential or proprietary, belonging to the buyer.

(5) Any provision in which the seller stipulates to a confession of judgment.

(6) Any provision requiring the seller to pay the buyer's attorney's fees and costs if the purchase agreement is not completed.

(7) Any provision requiring the seller to pay any tax liability arising under the federal tax laws, other than the seller's own tax liability, if any, that results from the transfer.

(8) Any provision providing for brokerage fees incurred in the contract to be deducted from the purchase price disclosed pursuant to paragraph (5) of subdivision (a) of Section 10136.

(9) Any forum selection provision providing for jurisdiction to be in a court outside of California for any action arising under the contract.

(10) Any choice-of-law provision that provides for controlling law to be other than California law in any action arising under the contract.

(11) A provision that provides the transferee with a security interest or collateral interest in any structured settlement payment rights that exceed the actual dollar amount of the structured settlement payment rights being transferred.

(12) Any provision that creates a ''buyer's first right of refusal'' to purchase any remaining structured payment rights that the payee may desire to sell in the future.

(b) The provisions in this section may not be waived by agreement of the parties.

SEC. 6. Section 10139 of the Insurance Code is amended to read:

10139. (a) At the time notice is provided to interested parties pursuant to subdivision (b) of Section 10136, or subdivision (c) of Section 10137, or, when applicable, at the time of filing a petition pursuant to paragraph (5) of subdivision (c) of Section 10139.5 for court approval when court approval of the transfer agreement is required, the transferee shall file with the Attorney General a copy of the transferee's petition for approval, a copy of the written disclosure statement required by subdivision (a) of Section 10136, a copy of the transfer agreement as defined in subdivision (o) of Section 10134, a copy of the annuity contract, a copy of any qualified assignment agreement, a copy of the underlying structured settlement agreement, a copy of any order or approval of any court or responsible administrative authority authorizing or approving the structured settlement, a copy and proof of notice to the interested parties, and a verified statement from the transferee stating that all of the conditions set forth in Sections 10136, 10137, and 10138 have been met.

(b) The Attorney General may, but is not required to, review any transfer agreement in order to ensure that the transfer meets the requirements of this article.

(c) The Attorney General may charge a reasonable fee for the filing of the transfer agreement as provided in this section. The fee shall be paid by the transferee.

SEC. 7. Section 10139.1 of the Insurance Code is repealed.

SEC. 8. Section 10139.1 is added to the Insurance Code, to read:

10139.1. Any subsequent transfer of any additional structured settlement payments between the payee and transferee may be made only after compliance with all of the requirements of this article.

SEC. 9. Section 10139.3 is added to the Insurance Code, to read:

10139.3. (a) None of the provisions of this article may be waived.

(b) Compliance with the requirements set forth in Sections 10136, 10137, and 10138 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights.

(c) A payee who proposes to make a transfer of structured settlement payment rights shall not incur any penalty, shall not forfeit any

application fee or other payment, and shall not otherwise incur any liability to the proposed transferee based on any failure of that transfer to satisfy the requirements of Sections 10136, 10137, and 10138.

(d) The transferee and any assignee shall be liable to the structured settlement obligor and the annuity issuer for any and all taxes incurred as a consequence of the transfer or as a consequence of any failure of the transferee or assignee to comply with this article or the terms of the structured settlement agreement.

(e) Neither the annuity issuer nor the structured settlement obligor may be required to divide any structured settlement payment between the payee and any transferee or assignee or between two or more transferees or assignees.

SEC. 10. Section 10139.4 is added to the Insurance Code, to read:

10139.4. A violation of this article by a transferee shall constitute an unfair business practice pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code and shall be subject to the penalties and other remedies of that chapter.

SEC. 11. Section 10139.5 is added to the Insurance Code, to read:

10139.5. (a) This section shall become operative only upon enactment into law of amendments to the Federal Internal Revenue Code to impose an excise tax on a transfer of structured settlement payment rights if the transfer is not approved by a court.

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.

(b) A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer is not required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by the court that:

(1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents.

(2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received that advice or knowingly waived that advice in writing.

(3) The transferee has provided the payee with a disclosure form consistent with Section 10136 and the transfer agreement complies with Section 10138.

(4) The transfer does not contravene any applicable statute or the order of any court or other government authority.

(c) Following a transfer of structured settlement payment rights under this article:

(1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments.

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer if the transfer contravenes the terms of the structured settlement for the following:

(A) Any taxes incurred by those parties as a consequence of the transfer.

(B) Any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by those parties with the order of the court or arising as a consequence of the transferee's failure to comply with this article.

(3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two, or more, transferees or assignees.

(4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this article.

(5) An application under this article for approval of a transfer of structured settlement payment rights shall be made by the transferee and brought in the county in which the payee resides if the payee is a resident of California. If the payee is not a resident of California, the application for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought as follows:

(A) In the county in which the payee resides.

(B) In the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business.

(C) In any court that approved the structured settlement agreement.

(6) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under this article, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, and shall include the following with that notice:

(A) A copy of the transferee's application.

(B) A copy of the transfer agreement.

(C) A listing of each of the payee's dependents, together with each dependent's age.

(D) A copy of the disclosure required in subdivision (a) of Section 10136.

(E) A copy of the annuity contract.

(F) A copy of any qualified assignment agreement.

(G) A copy of the underlying structured settlement agreement.

(H) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing.

(I) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which may not be less than 15 days after service of the transferee's notice, in order to be considered by the court .

(7) All court costs and filing fees shall be paid by the transferee.

(8) No later than the time of filing the petition for court approval, the transferee shall advise the payee of the payee's right to seek counsel in connection with the transferee's petition for court approval of the transfer agreement, and shall further advise the payee that if the payee retains counsel in connection with a petition for an order approving the transfer agreement, that the transferee shall pay the payee's counsel's fees, regardless of whether the transfer agreement is approved, in an amount not to exceed one thousand five hundred dollars ($1,500).

(d) The transferee shall, within 30 days of obtaining final court approval, file with the Attorney General a copy of any final court order approving or denying the transfer of structured settlement payment rights. The transferee shall specify in written form the following information:

(1) Whether the payee was represented by an attorney and the costs paid or owed to that attorney by the transferee and, if known, by the payee.

(2) The county and judicial district where the court approval was filed.

(3) For approved agreements, whether any changes were made to the transfer agreement.

(4) For rejected agreements, the general category for the rejection.

(5) The total court costs and attorney's fees paid by the transferor to obtain court approval.

(6) The purchase prices of the transfer agreement and its effective interest rate.

(e) Not later than March 31, 2004, the Attorney General shall file a report with the Legislature to assist in the evaluation of the impact of this section. The report shall include, based on information the Attorney General has received from transferees, the following:

(1) The number of petitions filed.

(2) The number of petitions approved without change.

(3) The number of petitions approved with changes and the general category of the changes requested.

(4) The number of petitions rejected and the general categories for rejection.

(5) The range of purchase prices, mean purchase price, median purchase price mean, effective interest rate and median effective interest rate.

(6) The number of petitions in which the payee was represented by counsel, and if known, the amount of compensation paid to counsel by the transferee and the payee.

CHAPTER 625

An act to amend Section 1601 of, and to add and repeal Section 1601.1 of, the Business and Professions Code, relating to dentistry.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 1601 of the Business and Professions Code is amended to read:

1601. (a) There is in the Department of Consumer Affairs, the Dental Board of California in which the administration of this chapter is vested. The board consists of eight practicing dentists, one registered dental hygienist, one registered dental assistant, and four public members. Of the eight practicing dentists, one shall be a member of a faculty of any California dental college, and one shall be a dentist practicing in a nonprofit community clinic. The board shall be organized into standing committees dealing with examinations, enforcement, and other subjects as the board deems appropriate.

This section shall become inoperative on July 1, 2002, and, as of January 1, 2003, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2003, 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).

(b) For purposes of this chapter, any reference in this chapter to the Board of Dental Examiners shall be deemed to refer to the Dental Board of California.

SEC. 2. Section 1601.1 is added to the Business and Professions Code, to read:

1601.1. (a) There shall be in the Department of Consumer Affairs the Dental Board of California in which the administration of this

chapter is vested. The board shall consist of eight practicing dentists, one registered dental hygienist, one registered dental assistant, and four public members. Of the eight practicing dentists, one shall be a member of a faculty of any California dental college and one shall be a dentist practicing in a nonprofit community clinic. The appointing powers, described in Section 1603, may appoint to the board a person who was a member of the prior board. The board shall be organized into standing committees dealing with examinations, enforcement, and other subjects as the board deems appropriate.

(b) For purposes of this chapter, any reference in this chapter to the Board of Dental Examiners shall be deemed to refer to the Dental Board of California.

(c) The board shall have all authority previously vested in the existing board under this chapter. The board may enforce all disciplinary actions undertaken by the previous board.

(d) This section shall become operative on January 1, 2002.

(e) This section 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. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 3. Section 2 of this bill shall become operative only if SB 134 of the 2001–02 Regular Session is enacted and becomes effective on or before January 1, 2002. If SB 134 is enacted and becomes effective on or before January 1, 2002, Section 1 of this bill shall not become operative.

CHAPTER 626

An act to add Section 33334.2a to, and to repeal Section 33334.17 of, the Health and Safety Code, relating to redevelopment.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 33334.2a is added to the Health and Safety Code, to read:

33334.2a. (a) The Orange County Development Agency may use the funds described in Section 33334.2 anywhere within the unincorporated territory, or within the incorporated limits of any city

within the County of Orange. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of a city only if the agency and the board of supervisors find all of the following:

(1) Both the County of Orange and the city have adopted and are implementing complete and current housing elements of their general plans that the department has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(2) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(3) The development to be funded shall be a rental housing development containing units affordable to lower income households or very low income households, as defined in Sections 50079.5 and 50105.

(4) The development is in an area with a need for additional affordable housing.

(5) If applicable, Article XXXIV of the California Constitution permits the development.

(6) The city in which the development is to be constructed has certified to the agency that the city's redevelopment agency, if one exists, is not subject to sanctions pursuant to subdivision (e) of Section 33334.12 for failure to expend or encumber a housing fund excess surplus.

(b) If the agency uses these funds within the incorporated limits of a city, all of the following requirements shall apply:

(1) The funds shall be used only for the acquisition of land for, and the design and construction of, housing containing units affordable to lower income households or very low income households, as defined in Sections 50079.5 and 50105, or for the acquisition or rehabilitation of publicly assisted rental housing that is threatened with conversion to market rates.

(2) If less than all the units in the development are affordable to lower income households or very low income households, any agency assistance shall not exceed the amount needed to make the housing affordable to lower income households and very low income households.

(3) The units in the development that are affordable to lower income households or very low income households shall remain affordable for a period of at least 55 years. Compliance with this requirement shall be ensured by the execution and recordation of covenants and restrictions that, notwithstanding any other provision of law, shall run with the land.

(4) No development shall be located in a census tract where more than 50 percent of its population is very low income.

(5) Assisted developments shall be located on sites suitable for multifamily housing near public transportation.

(6) Developed units shall not be treated as meeting the regional housing needs allocation under both the city's and county's housing elements.

(7) The funds shall be used only for developments for which the city in which the development will be constructed has approved the agency's use of funds for the development or has granted land use approvals for the development.

(8) The aggregate number of units assisted by the county over each five-year period shall include at least 10 percent that are affordable to households earning 30 percent or less of the area median income, and at least 40 percent that are affordable to very low income households.

(c) The Orange County Development Agency shall make diligent efforts to obtain the development of low- and moderate-income housing in unincorporated areas, including in developing areas of the county.

SEC. 2. Section 33334.17 of the Health and Safety Code is repealed.

SEC. 3. In enacting Section 33334.2a of the Health and Safety Code pursuant to Section 1 of this act, the Legislature recognizes the unique circumstances that exist with respect to the Orange County Development Agency that justify the enactment of this legislation. The County of Orange has a policy, consistent with state law, of encouraging annexation and incorporation of already developed areas so as to minimize the role of the County of Orange as a provider of municipal services. This policy has resulted in a shrinking unincorporated area within the County of Orange that is available and suitable for development of housing. As of 2000, only 7.7 percent of the county population resides in unincorporated areas. In addition, the existing county redevelopment project areas in the unincorporated territory of the County of Orange offer few opportunities for development of affordable rental housing. The Santa Ana Heights project area is constrained by noise limitations resulting from the location of the developable areas adjacent to John Wayne Airport. The Neighborhood Development and Preservation project areas consist largely of single family homes with few available sites for new housing. Given these constraints, there are few opportunities for development of new affordable housing within the unincorporated areas of the County of Orange, either inside or outside of the redevelopment project areas that have been adopted by the county.

Consequently, the policy goals of the Legislature to advance the development of affordable housing is best served in the case of the Orange County Development Agency by allowing the agency to spend

its housing funds within the incorporated cities in the County of Orange subject to the restrictions and requirements set forth in this act.

CHAPTER 627

An act to amend Section 4584 of the Public Resources Code, relating to forest resources.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 4584 of the Public Resources Code is amended to read:

4584. Upon determining that the exemption is consistent with the purposes of this chapter, the board may exempt from this chapter or portions thereof, any person engaged in forest management whose activities are limited to any of the following:

(a) The cutting or removal of trees for the purpose of constructing or maintaining a right-of-way for utility lines.

(b) The planting, growing, nurturing, shaping, shearing, removal, or harvest of immature trees for Christmas trees or other ornamental purposes or minor forest products, including fuelwood.

(c) The cutting or removal of dead, dying, or diseased trees of any size.

(d) Site preparation.

(e) Maintenance of drainage facilities and soil stabilization treatments.

(f) Timber operations on land managed by the Department of Parks and Recreation.

(g) (1) The one-time conversion of less than three acres to a nontimber use. No person, whether acting as an individual or as a member of a partnership, or as an officer or employee of a corporation or other legal entity, may obtain more than one exemption pursuant to this subdivision in a five-year period. If a partnership has as a member, or if a corporation or any other legal entity has as an officer or employee, a person who has received this exemption within the past five years, whether as an individual or as a member of a partnership, or as an officer or employee of a corporation or other legal entity, then that partnership, corporation, or other legal entity is not eligible for this exemption. ''Person,'' for purposes of this subdivision, means an individual, partnership, corporation, or any other legal entity.

(2) (A) Notwithstanding Section 4554.5, the board shall adopt regulations that become effective and operative on or before July 1, 2002, and do all of the following:

(i) Identify the required documentation of a bona fide intent to complete the conversion that an applicant will need to submit in order to be eligible for the exemption in paragraph (1).

(ii) Authorize the department to inspect the sites approved in conversion applications that have been approved on or after January 1, 2002, in order to determine that the conversion was completed within the two-year period described in subparagraph (B) of paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of the California Code of Regulations.

(iii) Require the exemption under this subdivision to expire if there is any change in timberland ownership. The person who originally submitted an application for an exemption under this subdivision shall notify the department of a change in timberland ownership on or before five calendar days after a change in ownership.

(iv) The board may adopt regulations allowing a waiver of the five-year limitation described in paragraph (1) upon finding that the imposition of the five-year limitation would impose an undue hardship on the applicant for the exemption. The board may adopt a process for an appeal of a denial of a waiver.

(B) The application form for the exemption pursuant to paragraph (1) shall prominently advise the public that violations of the conversion exemption, including conversions applied for in the name of someone other than the person or entity implementing the conversion in bona fide good faith, is a violation of this chapter and penalties may accrue up to ten thousand dollars ($10,000) for each violation pursuant to Article 8 (commencing with Section 4601).

(h) Easements granted by a right-of-way construction agreement administered by the federal government if any timber sales and operations within or affecting these areas are reviewed and conducted pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

(i) The cutting, removal, or sale of timber or other solid wood forest products from the species Taxus brevifolia (Pacific yew), provided that the known locations of any stands of this species three inches and larger in diameter at breast height are identified in the exemption notice submitted to the department. Nothing in this subdivision is intended to authorize the peeling of bark from, or the cutting or removal of, Taxus brevifolia within a watercourse and lake protection zone, special treatment area, buffer zone, or other area where timber harvesting is prohibited or otherwise restricted pursuant to board rules.

(j) (1) The cutting or removal of trees in compliance with Sections 4290 and 4291 which eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuelbreak for a distance of not more than 150 feet on each side from an approved and legally permitted structure that complies with the California Building Code, when that cutting or removal is conducted in compliance with this subdivision. For purposes of this subdivision, an ''approved and legally permitted structure'' includes only structures that are designed for human occupancy and garages, barns, stables, and structures used to enclose fuel tanks.

(2) (A) The cutting or removal of trees pursuant to this subdivision shall be limited to cutting or removal that will result in a reduction in the rate of fire spread, fire duration and intensity, fuel ignitability, or ignition of the tree crowns and shall be in accordance with any regulations adopted by the board pursuant to this section.

(B) Trees may not be cut or removed pursuant to this subdivision by the clearcutting regeneration method, by the seed tree removal step of the seed tree regeneration method, or by the shelterwood removal step of the shelterwood regeneration method.

(3) (A) Surface fuels, including logging slash and debris, low brush, and deadwood, that could promote the spread of wildfire shall be chipped, burned, or otherwise removed from all areas of timber operations within 45 days from the date of commencement of timber operations pursuant to this subdivision.

(B) (i) All surface fuels that are not chipped, burned, or otherwise removed from all areas of timber operations within 45 days from the date of commencement of timber operations may be determined to be a nuisance and subject to abatement by the department or the city or county having jurisdiction.

(ii) The costs incurred by the department, city, or county, as the case may be, to abate the nuisance upon any parcel of land subject to the timber operations, including, but not limited to, investigation, boundary determination, measurement, and other related costs, may be recovered by special assessment and lien against the parcel of land by the department, city, or county. The assessment may be collected at the same time and in the same manner as ordinary ad valorem taxes, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as is provided for ad valorem taxes.

(4) All timber operations conducted pursuant to this subdivision shall conform to applicable city or county general plans, city or county implementing ordinances, and city or county zoning ordinances. Nothing in this paragraph is intended to authorize the cutting, removal, or sale of timber or other solid wood forest products within an area where

timber harvesting is prohibited or otherwise restricted pursuant to the rules or regulations adopted by the board.

(5) (A) The board shall adopt regulations, initially as emergency regulations in accordance with subparagraph (B), that the board considers necessary to implement and to obtain compliance with this subdivision.

(B) The emergency regulations adopted pursuant to subparagraph (A) shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

CHAPTER 628

An act to amend Sections 2585 and 2586 of the Business and Professions Code, and to amend Section 10176.25 of the Insurance Code, relating to nutritional advice.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 2585 of the Business and Professions Code is amended to read:

2585. (a) Any person representing himself or herself as a registered dietitian shall meet one of the following qualifications:

(1) Been granted, prior to January 1, 1981, the right to use the term ''registered dietitian'' by a public or private agency or institution recognized by the State Department of Health Services as qualified to grant the title, provided that person continues to meet all requirements and qualifications periodically prescribed by the agency or institution for the maintenance of that title.

(2) Possess all of the following qualifications:

(A) Be 18 years of age or older.

(B) Satisfactory completion of appropriate academic requirements for the field of dietetics and related disciplines and receipt of a baccalaureate or higher degree from a college or university accredited by the Western Association of Schools and Colleges or other regional accreditation agency.

(C) Satisfactory completion of a program of supervised practice for a minimum of 900 hours that is designed to prepare entry level practitioners through instruction and assignments in a clinical setting. Supervisors of the program shall meet minimum qualifications established by public or private agencies or institutions recognized by the State Department of Health Services to establish those qualifications.

(D) Satisfactory completion of an examination administered by a public or private agency or institution recognized by the State Department of Health Services as qualified to administer the examinations.

(E) Satisfactory completion of continuing education requirements established by a public or private agency or institution recognized by the State Department of Health Services to establish the requirements.

(b) Any person representing himself or herself as a dietetic technician, registered shall possess all of the following qualifications:

(1) Be 18 years of age or older.

(2) Satisfactory completion of appropriate academic requirements and receipt of an associate's degree or higher from a college or university accredited by the Western Association of Schools and Colleges or other regional accreditation agency.

(3) Satisfactory completion of the dietetic technician program requirements by an accredited public or private agency or institution recognized by the State Department of Health Services including not less than 450 hours of supervised practice.

(4) Satisfactory completion of an examination administered by a public or private agency or institution recognized by the State Department of Health Services to administer the examination.

(5) Satisfactory completion of continuing education requirements established by a public or private agency or institution recognized by the State Department of Health Services to establish the requirements.

(c) It is a misdemeanor for any person not meeting the criteria of subdivision (a) or (b) to use, in connection with his or her name or place of business, the words ''dietetic technician, registered,'' ''dietitian,'' ''dietician,'' ''registered dietitian,'' ''registered dietician,'' or the letters ''RD,'' ''DTR,'' or any other words, letters, abbreviations, or insignia indicating or implying that the person is a dietitian, or dietetic technician, registered or registered dietitian, or to represent, in any way, orally, in writing, in print or by sign, directly or by implication, that he or she is a dietitian or a dietetic technician, registered or a registered dietitian.

(d) Any person employed by a licensed health care facility as a registered dietitian on the effective date of this chapter may continue to represent himself or herself as a registered dietitian while employed by

a licensed health care facility, if he or she has satisfied the requirements of either paragraph (1) or paragraph (2) of subdivision (a), except that he or she shall not be required to satisfy the examination requirement of subparagraph (B) of paragraph (2) of subdivision (a).

(e) Notwithstanding any other provision of law or regulation that limits reimbursement to state licensed health care providers and upon referral by a physician and surgeon the following persons may be reimbursed for the nutritional advice or advice concerning proper nutrition as set forth in Section 2068, or for the nutritional assessments, counseling, and treatments as set forth in Section 2586:

(1) Registered dietitians.

(2) Other nutritional professionals with a master's or higher degree in a field covering clinical nutrition sciences, from a college or university accredited by a regional accreditation agency, who are deemed qualified to provide these services by the referring physician and surgeon.

(f) Nothing in this section shall be construed to mandate direct reimbursement of registered dietitians, or other nutrition professionals described in subdivision (e), as a separate provider type under the Medi-Cal program, nor to mandate reimbursement where expressly prohibited by federal law or regulation.

SEC. 2. Section 2586 of the Business and Professions Code is amended to read:

2586. (a) Notwithstanding any other provision of law, a registered dietitian, or other nutritional professional meeting the qualifications set forth in subdivision (e) of Section 2585 may, upon referral by a health care provider authorized to prescribe dietary treatments, provide nutritional and dietary counseling, conduct nutritional and dietary assessments, develop nutritional and dietary treatments, including therapeutic diets, order medical laboratory tests related to nutritional therapeutic treatments when authorized to do so by a written protocol prepared or approved by the referring physician and surgeon, and accept or transmit verbal orders consistent with an established protocol as required by this section or electronically transmitted orders from the health care provider to implement medical nutrition therapy for individuals or groups of patients in licensed institutional facilities or in private office settings. The referral shall be accompanied by a written prescription signed by the health care provider detailing the patient's diagnosis and including a statement of the desired objective of dietary treatment, unless a referring physician and surgeon has established or approved a written protocol governing the patient's treatment. The services described in this subdivision may be termed ''medical nutrition therapy.''

(b) (1) Notwithstanding any other provision of law, a dietetic technician, registered meeting the qualifications set forth in Section 2585 may, under the direct supervision of a registered dietitian, assist in the implementation or monitoring of services specified in subdivision (a), but may not develop nutritional or dietary therapy or treatments, order medical laboratory tests, or accept or transmit verbal orders.

(2) (A) For purposes of this subdivision, "direct supervision" means the supervising registered dietitian shall be physically available to the dietetic technician, registered for consultation whenever consultation is required. However, in the case of a small or rural hospital, as defined in Section 124840 of the Health and Safety Code, the registered dietitian may be available for consultation by telephone or other electronic means, provided that the registered dietitian is physically on the facility site a sufficient amount of time to provide adequate supervision over and review of the work of the dietetic technician, registered.

(B) For purposes of this subdivision, "physically available" means physical onsite presence during regular business hours, and includes telephonic or electronic availability at all times and the ability to respond to the facility within a reasonable period of time when required. The registered dietitian shall review any activities performed by the dietetic technician, registered during any period when the registered dietitian was not physically onsite.

(3) For purposes of this subdivision, a registered dietitian shall not supervise more than two dietetic technicians, registered at one time.

(c) It is a misdemeanor for a person specified in subdivision (e) of Section 2585 to practice in a manner inconsistent with the requirements set forth in this section.

(d) Nothing in this section shall preclude a person specified in subdivision (e) of Section 2585 from providing information as permitted by Section 2068.

(e) For purposes of this section, "health care provider" means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act.

(f) The requirement of a written prescription shall be deemed to be satisfied by an entry in the patient records of a patient who is undergoing treatment at a licensed health care facility if the contents of the patient records reflect the information required by this section.

(g) Nothing in this section or Section 2585 shall be interpreted to establish educational criteria or practice restrictions or limitations for other health care providers licensed under Division 2 (commencing with Section 500) or the Osteopathic Initiative Act or the Chiropractic Initiative Act.

SEC. 3. Section 10176.25 of the Insurance Code is amended to read:

10176.25. (a) As an alternative to an exclusion permitted by Section 10176, a disability insurance policy may provide that services of a registered dietitian or other nutrition professional meeting the qualifications prescribed by subdivision (a) or (e) of Section 2585 of the Business and Professions Code will be paid only if rendered pursuant to a method of treatment prescribed by a person holding a physician's and surgeon's certificate issued by the Medical Board of California.

(b) Nothing in this section requires disability insurers to automatically pay for services provided by a registered dietitian or other nutrition professional.

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.

CHAPTER 629

An act to add Sections 56435, 56449, and 58930 to, to add Article 13.5 (commencing with Section 8282) to Chapter 2 of Part 6 of, and to add Chapter 2.5 (commencing with Section 8499.10) to Part 6 of, the Education Code, relating to preschool transition.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. This act shall be known and cited as the Preschool Transfer Act of 2001.

SEC. 2. Article 13.5 (commencing with Section 8282) is added to Chapter 2 of Part 6 of the Education Code, to read:

Article 13.5. Transfer of Information

8282. (a) The Legislature finds and declares that the state makes a substantial, annual investment in preschool, infant and toddler, and schoolage child development programs for eligible families. It is in the best interests of children and their families, and the taxpayers of California, to have information about the development and learning

abilities of children developed in these settings, health and other information transferred to, or otherwise available to, the pupil's elementary school.

(b) When a child in a state-funded preschool or infant and toddler program will be transferring to a local public school, the preschool or infant and toddler program shall provide the parent or guardian with information from the previous year deemed beneficial to the pupil and the public school teacher, including, but not limited to, development issues, social interaction abilities, health background, and diagnostic assessments, if any. The preschool or infant and toddler program may, with the permission of the parent or guardian, transfer this information to the pupil's elementary school.

(c) Any child who has participated in a state subsidized preschool that maintains results-based standards, including the desired results accountability system, may have the performance information transferred to any subsequent or concurrent public school setting. Any transferred information shall be in summary form and only accomplished with the permission of the parent or guardian.

SEC. 3. Chapter 2.5 (commencing with Section 8499.10) is added to Part 6 of the Education Code, to read:

CHAPTER 2.5. HEAD START

8499.10. The Legislature finds and declares all of the following:

(a) The Congress has recognized the importance of the transfer from preschool to primary school. Section 642A of Title VI of Subtitle A of Chapter 8 of Subchapter B of the federal Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) was enacted to require grantees of federal Head Start funds to take steps to coordinate with and involve the local educational agency serving the community, including, but not limited to, all of the following:

(1) Developing and implementing a systematic procedure for transferring, with parental consent, Head Start program records for each participating child to the school in which the child will enroll.

(2) Establishing channels of communication between Head Start staff and their counterparts in the schools, including, but not limited to, teachers, social workers, and health staff, to facilitate the coordination of programs.

(3) Conducting meetings involving parents, kindergarten or elementary school teachers, and Head Start program teachers to discuss the educational, developmental, and other needs of individual children.

(4) Organizing and participating in joint transition-related training of school staff and Head Start staff.

(5) Developing and implementing a family outreach and support program in cooperation with entities carrying out parental involvement efforts under Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.).

(6) Assisting families, administrators, and teachers in enhancing educational and developmental continuity between Head Start services and elementary school classes.

(7) Linking the services provided in the Head Start program with the education services provided by the local educational agency.

(b) The superintendent shall advise local education agencies of these federal requirements.

SEC. 4. Section 56435 is added to the Education Code, to read:

56435. When a child with exceptional needs will be transferring to a local public school, the program may choose, with the permission of the parent or guardian, to transfer information from the previous year deemed beneficial to the pupil and the teacher, including, but not limited to, development issues, social interaction abilities, health background, and diagnostic assessments, if any, to the public school.

SEC. 5. Section 56449 is added to the Education Code, to read:

56449. When a child between the ages of three and five years with special education needs will be transferring to a local public school, the program may choose, with the permission of the parent or guardian, to transfer information from the previous year deemed beneficial to the pupil and the teacher, including, but not limited to, development issues, social interaction abilities, health background, and diagnostic assessments, if any, to the public school.

SEC. 6. Section 58930 is added to the Education Code, to read:

58930. When a child in a preschool and infant development demonstration program will be transferring to a local public school, the program may choose, with the permission of the parent or guardian, to transfer information from the previous year deemed beneficial to the pupil and the teacher, including, but not limited to, development issues, social interaction abilities, health background, and diagnostic assessments, if any, to the public school.

CHAPTER 630

An act to add Section 1035.2 to the Insurance Code, relating to insurance.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 1035.2 is added to the Insurance Code, to read:

1035.2. (a) The officers and employees of the Conservation and Liquidation Office are subject to all conflict-of-interest provisions and financial disclosure requirements that would apply if they were employees of the department.

(b) (1) Prior to February 1, 2002, the department shall determine, pursuant to the provisions of Section 19990 of the Government Code, those activities of the officers and employees of the Conservation and Liquidation Office that are inconsistent, incompatible, or in conflict with their duties as officers or employees of that office.

(2) Prior to February 1, 2002, the department shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of Article 3 (commencing with Section 87300) of Chapter 7 of Title 9 of the Government Code, pertaining to the officers and employees of the Conservation and Liquidation Office. The Conflict of Interest Code and any other regulations necessary to implement this section shall be promulgated by the department as emergency regulations.

(c) The provisions of Chapter 7 (commencing with Section 87100) of Title 9 of the Government Code shall apply to a person who contracts with the Conservation and Liquidation Office to the same extent as would apply if that person were entering into the same or similar contractual relationship with the department.

(d) The department shall ensure that the officers and employees of the Conservation and Liquidation Office and persons who contract with that office comply with all provisions of this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 631

An act to amend Section 4301 of, and to add Sections 4052.5 and 4126 to, the Business and Professions Code, relating to pharmacies.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 4052.5 is added to the Business and Professions Code, to read:

4052.5. (a) In addition to the authority allowed under Section 4073, a pharmacist filling a prescription order for a drug product may select a different form of medication with the same active chemical ingredients of equivalent strength and duration of therapy as the prescribed drug product when the change will improve the ability of the patient to comply with the prescribed drug therapy.

(b) In no case shall a selection be made pursuant to this section if the prescriber personally indicates, either orally or in his or her own handwriting, "Do not substitute" or words of similar meaning. Nothing in this subdivision shall prohibit a prescriber from checking a box on a prescription marked "Do not substitute" if the prescriber personally initials the box or checkmark.

(c) Selection pursuant to this section is within the discretion of the pharmacist, except as provided in subdivision (b). The pharmacist who selects the drug product to be dispensed pursuant to this section shall assume the same responsibility for selecting the dispensed drug product as would be incurred in filling a prescription for a drug product using the prescribed form of medication. There shall be no liability on the prescriber for an act or omission by a pharmacist in selecting, preparing, or dispensing a drug product pursuant to this section.

(d) This section shall apply to all prescriptions, including those presented by or on behalf of persons receiving assistance from the federal government or pursuant to the California Medical Assistance Program set forth in Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(e) When a substitution is made pursuant to this section, the use of the different form of medication shall be communicated to the patient, and the name of the dispensed drug product shall be indicated on the prescription label, unless the prescriber orders otherwise.

(f) This section shall not permit substitution between long-acting and short-acting forms of a medication with the same chemical ingredients or between one drug product and two or more drug products with the same chemical ingredients.

SEC. 2. Section 4126 is added to the Business and Professions Code, to read:

4126. (a) Notwithstanding any other provision of law, a covered entity may contract with a pharmacy to provide pharmacy services to patients of the covered entity, as defined in Section 256b of Title 42 of the United States Code, including dispensing preferentially priced drugs obtained pursuant to Section 256b of Title 42 of the United States Code.

Contracts between those covered entities and pharmacies shall comply with guidelines published by the Health Resources and Services Administration and shall be available for inspection by board staff during normal business hours.

(b) Drugs purchased pursuant to Section 256b of Title 42 of the United States Code and received by a pharmacy shall be segregated from the pharmacy's other drug stock by either physical or electronic means. All records of acquisition and disposition of these drugs shall be readily retrievable in a form separate from the pharmacy's other records.

(c) Drugs obtained by a pharmacy to be dispensed to patients of a covered entity pursuant to Section 256b of Title 42 of the United States Code that cannot be distributed because of a change in circumstances for the covered entity or the pharmacy shall be returned to the distributor from which they were obtained. For the purposes of this section, a change in circumstances includes, but is not limited to, the termination or expiration of the contract between the pharmacy and the covered entity, the closure of a pharmacy, disciplinary action against the pharmacy, or closure of the covered entity.

(d) A licensee that participates in a contract to dispense preferentially priced drugs pursuant to this section shall not have both a pharmacy and a wholesaler license.

(e) Neither a covered entity nor a pharmacy shall be required to obtain a license as a wholesaler based on acts reasonably necessary to fully participate in the drug purchase program established by Section 256b of Title 42 of the United States Code.

SEC. 3. Section 4301 of the Business and Professions Code is amended to read:

4301. The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(a) Gross immorality.

(b) Incompetence.

(c) Gross negligence.

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining whether the furnishing of controlled substances is clearly excessive shall include, but not be limited to, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of

orders), the type and size of the customer, and where and to whom the customer distributes its product.

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering or offering to sell, furnish, give away, or administer any controlled substance to an addict.

(j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(*l*) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. 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 provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw 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.

(m) The cash compromise of a charge of violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances. The record of the compromise is conclusive evidence of unprofessional conduct.

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.

(p) Actions or conduct that would have warranted denial of a license.

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

(r) The selling, trading, transferring, or furnishing of drugs obtained pursuant to Section 256b of Title 42 of the United States Code to any person a licensee knows or reasonably should have known not to be a patient of a covered entity, as defined in paragraph (4) of subsection (a) of Section 256b of Title 42 of the United States Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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.

CHAPTER 632

An act to add Section 125.5 to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), relating to water.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 125.5 is added to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), to read:

125.5. On or before June 30, 2002, the board of directors of a district shall adopt a resolution establishing guidelines for the intended use of

unreserved fund balances. The guidelines shall require that any disbursement of funds to member public agencies that represents a refund of money paid for the purchase of water shall be distributed based upon each member agency's purchase of water from the district during the previous fiscal year.

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

CHAPTER 633

An act to amend Section 8051.2 of the Fish and Game Code, relating to sea urchins, and making an appropriation therefor.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. The Legislature finds that the landing fee collected pursuant to Section 8051.1, as that section read on December 31, 2001, has accumulated a sizable unexpended reserve even though collection of the fee was terminated on March 1, 2001. The landing fee reserve results from the portion of the landing fee dedicated to enhancement projects, pursuant to Section 8051.2, and this revenue has historically been allocated to projects recommended by the Director's Sea Urchin Advisory Committee. It is the intent of the Legislature that the department continue to expend the landing fee reserve for sea urchin enhancement according to the recommendations of the new Sea Urchin Fishery Advisory Committee for any purpose authorized by Section 8051.2. It is further the intent of the Legislature that the Sea Urchin Fishery Advisory Committee serve to advise the department regarding individual and comprehensive sea urchin fishery management actions, development of a fishery management plan, establishment of marine protected areas as they pertain to the sea urchin fishery, and other possible actions that may impact the sea urchin fishery and the marine ecosystem upon which it depends.

SEC. 2. Section 8051.2 of the Fish and Game Code is amended to read:

8051.2. (a) (1) The landing fee collected pursuant to Section 8051.1, as that section read on December 31, 2001, shall be deposited in the Fish and Game Preservation Fund and shall be used to fund a wide range of projects, activities, and programs based on an ecosystem approach to sea urchin management to ensure a sustainable sea urchin fishery. The funds shall be used for sea urchin fishery research, enhancement, and other projects contributing to sustainable fishery management practices, including, but not limited to, educational materials and forums, industry coordination, and communication, and for the purposes described in paragraph (2). The department shall maintain internal accountability necessary to ensure that all restrictions on the expenditure of these funds are met.

(2) After the approval of the Sea Urchin Fishery Advisory Committee, funds collected pursuant to Section 8051.1, as that section read on December 31, 2001, may be paid to the Department of Food and Agriculture to pay the costs of conducting a referendum vote to establish a marketing council or commission for the promotion of sea urchins if the establishment of a marketing council or commission is authorized by the Food and Agricultural Code.

(b) The Sea Urchin Fishery Advisory Committee shall annually submit recommendations to the department for expending the fee revenue collected pursuant to Section 8051.1, as that section read on December 31, 2001, on any authorized project or activity. The committee and the department may establish a formal grant program to annually solicit, review, and select projects for funding.

(c) An amount, not to exceed 20 percent of the remaining fee revenues collected pursuant to Section 8051.1 may be used to administer the programs or projects funded from the revenues collected pursuant to Section 8051.1, as that section read on December 31, 2001, and for the reasonable and necessary expenses of the Sea Urchin Fishery Advisory Committee, including, but not limited to, reimbursing members for travel costs to attend committee meetings, retaining an industry representative, and selecting projects for funding.

(d) (1) The director shall appoint a Sea Urchin Fishery Advisory Committee consisting of 10 members, which shall meet not less than three times annually. Members shall serve at the pleasure of the director for a term of not more than two years and may be reappointed. Members shall be selected by the director from nominations submitted by sea urchin fishermen and processors and by associations representing the commercial sea urchin industry of California. Five of the industry members shall represent processors and five of the industry members shall represent divers. Each of the diver representatives shall hold a valid

sea urchin diving permit. Two of the diver representatives shall be from northern California, and three of the diver representatives shall be from southern California. One of the diver representatives from southern California shall reside in Santa Barbara County, one in Ventura County, and one in either Los Angeles County or San Diego County. All of the California diver representatives shall reside in different geographical areas of the state. Each diver representative shall select an alternate, approved by the director, who may act in that representative's absence. The alternate is not required to hold a current sea urchin diving permit and may reside in any geographical area in the state.

(2) The Sea Urchin Fishery Advisory Committee shall select a chairperson from its membership. The committee may contract with a person to serve as an industry representative, with the concurrence of the department, to work with the department's liaison in carrying out committee actions and recommendations and preparing for committee meetings.

(3) The department shall assign a staff liaison to coordinate with the chairperson and industry representative to ensure the actions of the committee are communicated to the department when undertaking fishery management activities.

(4) Members of the Sea Urchin Fishery Advisory Committee shall be considered for participation in relevant advisory positions and collaborative efforts established pursuant to Part 1.7 (commencing with Section 7050), and the committee may be consulted, as appropriate, regarding interim management or related fishery issues.

(e) The Sea Urchin Fishery Advisory Committee may annually submit to the department proposed projects and a budget for expending the remaining balance of the fee revenue collected pursuant to Section 8051.1, as that section read on December 31, 2001. The department shall report annually to the committee on all expenditures and accomplishments during the previous year for funds collected pursuant to Section 8051.1.

(f) (1) The department may contract with a nonprofit organization, in existence on the effective date of the act adding this section, which is established for the purpose of supporting and assisting the department, to support and assist the department in carrying out its duties pursuant to this section and may use the remainder of any funds collected pursuant to Section 8051.1 for that contract each fiscal year. The nonprofit organization shall be selected by the department with the advice of the Sea Urchin Fishery Advisory Committee.

(2) If the department enters into that contract, the nonprofit organization shall be responsible for carrying out this section, including coordinating activities with the Sea Urchin Fishery Advisory Committee and administering the expenditure of sea urchin landing fees

collected pursuant to Section 8051.1 as that section read on December 31, 2001. The department may not delegate the department's authority to seek and consider the advice of the Sea Urchin Fishery Advisory Committee regarding fishery management and related fishery issues.

(3) A contract awarded by the nonprofit organization for the purposes of this section is exempt from Chapter 1 (commencing with Section 10100) of Part 2 of the Public Contract Code.

(4) The nonprofit organization may, in addition, establish and administer an endowment fund for the purposes of this section. Funds received by the department pursuant to this section, any other funds received from the department, and nonstate funds received for these purposes may be deposited into the endowment fund.

(g) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

SEC. 3. Notwithstanding subdivision (d) of Section 8051.2 of the Fish and Game Code, the initial members of the Sea Urchin Fishery Advisory Committee shall be the 10 industry representatives from the Director's Sea Urchin Advisory Committee in existence on December 31, 2001. The committee members shall randomly select the length of their initial term on the Sea Urchin Fishery Advisory Committee so that not more than five serve for two years and five serve for one year.

CHAPTER 634

An act to add Section 22793.2 to the Government Code, to add Section 1367.45 to the Health and Safety Code, and to add Section 10145.2 to the Insurance Code, relating to health care coverage.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 22793.2 is added to the Government Code, to read:

22793.2. (a) A plan or contract shall provide coverage for a vaccine for acquired immune deficiency syndrome (AIDS) that is approved for marketing by the federal Food and Drug Administration and that is recommended by the United States Public Health Service.

(b) This section shall not be construed to require a plan or contract to provide coverage for any clinical trials relating to an AIDS vaccine or for any AIDS vaccine that has been approved by the federal Food and

Drug Administration in the form of an investigational new drug application.

(c) Nothing in this section is to be construed in any manner to limit or impede the board's power or responsibility to negotiate the most cost-effective price for vaccine purchases.

SEC. 2. Section 1367.45 is added to the Health and Safety Code, to read:

1367.45. (a) Every individual or group health care service plan contract that is issued, amended, or renewed on or after January 1, 2002, that covers hospital, medical, or surgery expenses shall provide coverage for a vaccine for acquired immune deficiency syndrome (AIDS) that is approved for marketing by the federal Food and Drug Administration and that is recommended by the United States Public Health Service.

(b) This section may not be construed to require a health care service plan to provide coverage for any clinical trials relating to an AIDS vaccine or for any AIDS vaccine that has been approved by the federal Food and Drug Administration in the form of an investigational new drug application.

(c) A health care service plan that contracts directly with an individual provider or provider organization may not delegate the risk adjusted treatment cost of providing services under this section unless the requirements of Section 1375.5 are met.

(d) Nothing in this section is to be construed in any manner to limit or impede a health care service plan's power or responsibility to negotiate the most cost-effective price for vaccine purchases.

SEC. 3. Section 10145.2 is added to the Insurance Code, to read:

10145.2. (a) Every policy of disability insurance that is issued, amended, or renewed on or after July 1, 2002, that covers hospital, medical, or surgery expenses shall provide coverage for a vaccine for acquired immune deficiency syndrome (AIDS) that is approved for marketing by the federal Food and Drug Administration and that is recommended by the United States Public Health Service.

(b) This section may not be construed to require a policy to provide coverage for any clinical trials relating to an AIDS vaccine or for any AIDS vaccine that has been approved by the federal Food and Drug Administration in the form of an investigational new drug application.

(c) This section shall not apply to vision only, dental only, accident only, specified disease, hospital indemnity, Medicare supplement, CHAMPUS supplement, long-term care, or disability income insurance. For hospital indemnity, accident only, or specified disease insurance coverage, benefits under this section shall apply only to the extent that the benefits are covered under the general terms and conditions that apply to all other benefits under the policy or certificate. Nothing in this

section shall be construed as imposing a new benefit mandate on accident only, hospital indemnity, or specified disease insurance.

(d) Nothing in this section is to be construed in any manner to limit or impede a disability insurer's power or responsibility to negotiate the most cost-effective price for vaccine purchases.

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.

CHAPTER 635

An act to add and repeal Division 110 (commencing with Section 130300) of, and to repeal Section 128812 of, the Health and Safety Code, and to add Item 9909-001-0988 to Section 2.00 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001), relating to the Health Insurance Portability and Accountability Act, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Division 110 (commencing with Section 130300) is added to the Health and Safety Code, to read:

DIVISION 110. THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY IMPLEMENTATION ACT OF 2001

130300. This division shall be known and may be cited as the Health Insurance Portability and Accountability Implementation Act of 2001.

130301. The Legislature finds and declares the following:

(a) The federal Health Insurance Portability and Accountability Act (42 U.S.C. Sec. 300gg), known as HIPAA, was enacted on August 21, 1996.

(b) HIPAA extends health coverage benefits to workers after they terminate or change employment by allowing the worker to participate in existing group coverage plans, thereby avoiding the additional

expense associated with obtaining individual coverage as well as the potential loss of coverage because of a preexisting health condition.

(c) Administrative simplification is a key feature of HIPAA, requiring standard national identifiers for providers, employers, and health plans and the development of uniform standards for the coding and transmission of claims and health care information. Administration simplification is intended to promote the use of information technology, thereby reducing costs and increasing efficiency in the health care industry.

(d) HIPAA also contains new standards for safeguarding the privacy and security of health information. Therefore, the development of policies for safeguarding the privacy and security of health records is a fundamental and indispensable part of HIPAA implementation that must accompany or precede the expansion or standardization of technology for recording or transmitting health information.

(e) The federal Health and Human Services Agency has published, and continues to publish, rules pertaining to the implementation of HIPAA. Following a 60-day congressional concurrence period, health providers and insurers have 24 months in which to implement these rules.

(f) These federal rules directly apply to state and county departments that provide health coverage, health care, mental health services, and alcohol and drug treatment programs. Other state and county departments are subject to these rules to the extent they use or exchange information with the departments to which the federal rules directly apply.

(g) In view of the substantial changes that HIPAA will require in the practices of both private and public health entities and their business associates, the ability of California government to continue the delivery of vital health services will depend upon the implementation of HIPAA in a manner that is coordinated among state departments as well as our partners in county government and the private health sector.

(h) The implementation of HIPAA shall be accomplished as required by federal law and regulations and shall be a priority for state departments.

130302. For the purposes of this division, the following definitions apply:

(a) ''Director'' means the Director of the Office of HIPAA Implementation.

(b) ''HIPAA'' means the federal Health Insurance Portability and Accountability Act.

(c) ''Office'' means the Office of HIPAA Implementation established by the office of the Governor in the Health and Human Services Agency.

(d) ''State entities'' means all state departments, boards, commissions, programs, and other organizational units of the executive branch of state government.

130303. The office shall assume statewide leadership, coordination, policy formulation, direction, and oversight responsibilities for HIPAA implementation. The office shall exercise full authority relative to state entities to establish policy, provide direction to state entities, monitor progress, and report on implementation efforts.

130304. The office shall be under the supervision and control of a director, known as the Director of the Office of HIPAA Implementation, who shall be appointed by, and serve at the pleasure of, the Secretary of the Health and Human Services Agency.

130305. The office shall be staffed, at a minimum, with the following personnel:

(a) Legal counsel to perform activities that may include, but are not limited to, determining the application of federal law pertaining to HIPAA.

(b) Staff with expertise in the rules promulgated by HIPAA.

(c) Staff to oversee the development of training curricula and tools and to modify the curricula and tools as required by the state's ongoing HIPAA compliance effort.

(d) Information technology staff.

(e) Staff, as necessary, to coordinate and monitor the progress made by all state entities in HIPAA implementation.

(f) Administrative staff, as necessary.

130306. (a) The office shall perform the following functions:

(1) Standardizing the HIPAA implementation process used in all state entities, which includes the following:

(A) Developing a master plan and overall state strategy for HIPAA implementation that includes timeframes within which specified activities will be completed.

(B) Specifying tools, such as protocols for assessment and reporting, and any other tools as determined by the director for HIPAA implementation.

(C) Developing uniform policies on privacy, security, and other matters related to HIPAA that shall be adopted and implemented by all state entities. In developing these policies, the office shall consult with representatives from the private sector, state government, and other public entities affected by HIPAA.

(D) Providing an ongoing evaluation of HIPAA implementation in California and refining the plans, tools, and policies as required to effect implementation.

(E) Developing standards for the office to use in determining the extent of HIPAA compliance.

(2) Representing the State of California in HIPAA discussions with the federal Department of Health and Human Services and at the Workgroup for Electronic Data Interchange and other national and regional groups developing standards for HIPAA implementation, including those authorized by the federal Department of Health and Human Services to receive comments related to HIPAA. In preparing comments for submission to these entities, the office shall work in coordination with private and public entities to which the comments relate. The office may review and approve all comments related to HIPAA that state entities or representatives from the University of California, to the extent authorized by its Regents, propose for submission to the federal Department of Health and Human Services or any other body or organization.

(3) Monitoring the HIPAA implementation activities of state entities and requiring these entities to report on their implementation activities at times specified by the director using a format prescribed by the director. The office shall seek the cooperation of counties in monitoring HIPAA implementation in programs that are administered by county government.

(4) Providing state entities with technical assistance as the director deems necessary and appropriate to advance the state's implementation of HIPAA as required by the schedule adopted by the federal Department of Health and Human Services. This assistance shall also include sharing information obtained by the office relating to HIPAA.

(5) Providing the Department of Finance with recommendations on HIPAA implementation expenditures, including proposals submitted by state entities and a recommendation on the amount to be appropriated for allocation by the Department of Finance to entities implementing HIPAA.

(6) Conducting a periodic assessment at least once every three years to determine whether staff positions established in the office and in other state entities to perform HIPAA compliance activities continue to be necessary or whether additional staff positions are required to complete these activities.

(7) Reviewing and approving contracts relating to HIPAA to which a state entity is a party prior to the contract's effective date.

(8) Reviewing and approving all HIPAA legislation proposed by state entities, other than state control agencies, prior to the proposal's review by any other entity and reviewing all analyses and positions, other than those prepared by state control agencies, on HIPAA related legislation being considered by either Congress or the Legislature.

(9) Ensuring state departments claim federal funding for those activities that qualify under federal funding criteria.

(10) Establishing a Web site that is accessible to the public to provide information in a consistent and accessible format concerning state HIPAA implementation activities, timeframes for completing those activities, HIPAA implementation requirements that have been met, and the promulgation of federal regulations pertaining to HIPAA implementation. The office shall update this Web site quarterly.

(b) In performing these functions, the office shall coordinate its activities with the State Office of Privacy Protection.

130307. The director shall establish an advisory committee to obtain information on statewide HIPAA implementation activities, which shall meet at a minimum of two times per year. It is the intent of the Legislature that the committee's membership include representatives from county government, from consumers, and from a broad range of provider groups, such as physicians and surgeons, clinics, hospitals, pharmaceutical companies, health care service plans, disability insurers, long-term care facilities, facilities for the developmentally disabled, and mental health providers. The director shall invite key stakeholders from the federal government, the Judicial Council, health care advocates, nonprofit health care organizations, public health systems, and the private sector to provide information to the committee.

130308. The office may contract for the provision of services required to implement this division. The Legislature finds that these contracts are for a new state function and authorizes the performance of this work by independent contractors, pursuant to paragraph (2) of subdivision (b) of Section 19130 of the Government Code.

130309. (a) All state entities subject to HIPAA shall complete an assessment, in a form specified by the office, prior to January 1, 2002, to determine the impact of HIPAA on their operations. The office shall report the statewide results of the assessment to the appropriate policy and fiscal committees of the Legislature on or before May 15, 2002.

(b) Other state entities shall cooperate with the office to determine whether they are subject to HIPAA, including, but not limited to, providing a completed assessment as prescribed by the office.

130310. All state entities shall cooperate with the efforts of the office to monitor HIPAA implementation activities and to obtain information on those activities.

130311. All state entities affected by HIPAA shall comply with the decisions of the director in achieving compliance with HIPAA.

130312. (a) The Department of Finance shall provide a complete accounting of HIPAA expenditures made by all state entities.

(b) The Department of Finance, in consultation with the office, shall develop and annually publish prior to August 1, guidelines for state entities to obtain additional HIPAA funding. All funding requests from state entities for HIPAA implementation, including, but not limited to,

requests for appropriations through the Budget Act or other legislation and requests for allocation of lump-sum funds from the Department of Finance, shall be reviewed and approved by the office prior to being submitted to the Department of Finance. Funding requests pertaining to information technology activities shall also be reviewed and approved by the Department of Information Technology.

(c) The Department of Finance shall notify the office and the Chairperson of the Senate Committee on Budget and Fiscal Review and the Chairperson of the Assembly Budget Committee of each allocation it approves within 10 working days of the approval. The Department of Finance shall also report to the Legislature quarterly on HIPAA allocations, redirections, and expenditures, categorized by state entity and by project.

130313. To the extent that funds are appropriated in the annual Budget Act, the office shall perform the following functions in order to comply with HIPAA requirements:

(a) The establishment and ongoing support of departmental HIPAA project management offices.

(b) The development, revision, and issuance of HIPAA compliance policies.

(c) Modifications of programs in accordance with any revised policies.

(d) Staff training on HIPAA compliance policies and programs.

(e) Coordination and communication with other affected entities.

(f) Modifications to, or replacement of, information technology systems.

(g) Consultation with appropriate stakeholders.

130314. The office shall report to the Legislature, upon its request, any services or programs that were temporarily reduced or suspended due to the redirection of funds for HIPAA compliance activities.

130315. State entities may adopt emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to implement HIPAA requirements set forth in final federal regulations. This authority shall terminate one year after the last final rule for HIPAA is issued by the federal government. The adoption of emergency regulations described in this section shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. An emergency regulation adopted under this section shall remain in effect for not more than two years.

130316. Any funds appropriated for the purpose of this division that remain unexpended or unencumbered on January 1, 2008, shall revert to

the General Fund on that date unless a statute that is enacted before January 1, 2008, extends the provisions of this division.

130317. This division shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 2. (a) Thirty-three million one hundred sixty-eight thousand dollars ($33,168,000) from the Federal Trust Fund is hereby appropriated for transfer to and in augmentation of Item 9909-001-0890 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001) for allocation to various departments by the Department of Finance in support of HIPAA compliance activities.

(b) Eleven million one hundred twenty thousand dollars ($11,120,000) from the General Fund is hereby appropriated for transfer to and in augmentation of Item 9909-001-0001 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001) for allocation to various departments by the Department of Finance in support of HIPAA compliance activities.

(c) One million one hundred forty-one thousand dollars ($1,141,000) from the Statewide HIPAA Compliance Fund is hereby appropriated for transfer to and in augmentation of Item 9909-001-0494 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001) for allocation to various departments by the Department of Finance in support of HIPAA compliance activities.

SEC. 3. Item 9909-001-0988 is added to Section 2.00 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001), to read:

9909–001–0988—For allocation by the Department of Finance in support of federal Health Insurance Portability and Accountability Act activities for applicant state agencies, departments, boards, commissions, or other entities of state government	10,000,000

Provisions:

1. Provisions 1 and 2 of Item 9909–001–0001 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001) shall also apply to allocations authorized by this item.
2. Notwithstanding any other provision of law, the Director of the Department of Finance may authorize expenditures in excess of the ten million dollars ($10,000,000) appropriated in this item.

SEC. 4. In the event that expenditures in support of the federal Health Insurance Portability and Accountability Act activities for applicant state agencies, departments, boards, commissions, or other entities of state government exceed the appropriations made by the

Budget Act of 2001 (Chapter 106 of the Statutes of 2001), the Director of Finance shall utilize a process similar to the Section 27 process contained in the Budget Act of 2001 (Chapter 106 of the Statutes of 2001).

SEC. 5. Section 128812 of the Health and Safety Code is repealed.

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:

Due to the specified deadlines for complying with the requirements of the federal Health Insurance Portability and Accountability Act, it is necessary that this act take effect immediately.

CHAPTER 636

An act to amend Section 53753 of the Government Code, and to amend Section 35469.6 of the Streets and Highways Code, relating to local agency assessments.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 53753 of the Government Code is amended to read:

53753. (a) The notice, protest, and hearing requirements imposed by this section supersede any statutory provisions applicable to the levy of a new or increased assessment that is in existence on the effective date of this section, whether or not that provision is in conflict with this article. Any agency that complies with the notice, protest, and hearing requirements of this section shall not be required to comply with any other statutory notice, protest, and hearing requirements that would otherwise be applicable to the levy of a new or increased assessment, with the exception of Division 4.5 (commencing with Section 3100) of the Streets and Highways Code. If the requirements of that division apply to the levy of a new or increased assessment, the levying agency shall comply with the notice, protest, and hearing requirements imposed by this section as well as with the requirements of that division.

(b) Prior to levying a new or increased assessment, or an existing assessment that is subject to the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution, an agency shall give notice by mail to the record owner of each identified

parcel. Each notice shall include the total amount of the proposed assessment chargeable to the entire district, the amount chargeable to the record owner's parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, and the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures for the completion, return, and tabulation of the assessment ballots required pursuant to subdivision (c), including a statement that the assessment shall not be imposed if the ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment, with ballots weighted according to the proportional financial obligation of the affected property. An agency shall give notice by mail at least 45 days prior to the date of the public hearing upon the proposed assessment.

(c) Each notice given pursuant to subdivision (b) shall contain an assessment ballot that includes the agency's address for receipt of the form and a place where the person returning the assessment ballot may indicate his or her name, a reasonable identification of the parcel, and his or her support or opposition to the proposed assessment. Each assessment ballot shall be in a form that conceals its contents once it is sealed by the person submitting the assessment ballot. Each assessment ballot shall be signed and either mailed or otherwise delivered to the address indicated on the assessment ballot. Regardless of the method of delivery, all assessment ballots shall be received at the address indicated, or the site of the public testimony, in order to be included in the tabulation of a majority protest pursuant to subdivision (e). Assessment ballots shall remain sealed until the tabulation of ballots pursuant to subdivision (e) commences, provided that an assessment ballot may be submitted, or changed, or withdrawn by the person who submitted the ballot prior to the conclusion of the public testimony on the proposed assessment at the hearing required pursuant to subdivision (d). An agency may provide an envelope for the return of the assessment ballot, provided that if the return envelope is opened by the agency prior to the tabulation of ballots pursuant to subdivision (e), the enclosed assessment ballot shall remain sealed as provided in this section.

(d) At the time, date, and place stated in the notice mailed pursuant to subdivision (b), the agency shall conduct a public hearing upon the proposed assessment. At the public hearing, the agency shall consider all objections or protests, if any, to the proposed assessment. At the public hearing, any interested person shall be permitted to present written or oral testimony. The public hearing may be continued from time to time.

(e) (1) At the conclusion of the public hearing conducted pursuant to subdivision (d), an impartial person designated by the agency who does

not have a vested interest in the outcome of the proposed assessment shall tabulate the assessment ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment. In a city, the impartial person may include, but is not limited to, the clerk of the agency. The impartial person may use technological methods of tabulating the assessment ballots, including, but not limited to, punchcard or optically readable (bar-coded) assessment ballots. During and after the tabulation, the assessment ballots shall be treated as disclosable public records, as defined in Section 6252, and equally available for inspection by the proponents and the opponents of the proposed assessment.

In the event that more than one of the record owners of an identified parcel submits an assessment ballot, the amount of the proposed assessment to be imposed upon the identified parcel shall be allocated to each ballot submitted in proportion to the respective record ownership interests or, if the ownership interests are not shown on the record, as established to the satisfaction of the agency by documentation provided by those record owners.

(2) A majority protest exists if the assessment ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the assessment ballots submitted, and not withdrawn, in its favor, weighting those assessment ballots by the amount of the proposed assessment to be imposed upon the identified parcel for which each assessment ballot was submitted.

(3) If there is a majority protest against the imposition of a new assessment, or the extension of an existing assessment, or an increase in an existing assessment, the agency shall not impose, extend, or increase the assessment.

(4) The majority protest proceedings described in this subdivision shall not constitute an election or voting for purposes of Article II of the California Constitution or of the California Elections Code.

SEC. 2. Section 35469.6 of the Streets and Highways Code is amended to read:

35469.6. At the hearing and prior to consideration of the correctness of the assessment and diagram, the legislative body shall hear and consider all protests to the proceedings for the levy of that assessment. The notice, hearing, and protest procedures shall comply with Section 53753 of the Government Code.

The Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (commencing with Section 2800) shall not apply to proceedings under this chapter.

CHAPTER 637

An act to add Section 12749.95 to the Water Code, relating to water.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 12749.95 is added to the Water Code, to read:

12749.95. (a) (1) The project for flood control on the Whitewater River in Riverside County is adopted and authorized substantially in accordance with the congressional approval and the final report of the Chief of Engineers dated December 29, 2000, as authorized by Section 101(b)(10) of the Water Resources Development Act of 2000 (Public Law 106-541), at an estimated cost to the state of the sum that may be appropriated for state cooperation by statute, upon the recommendation and advice of the department.

(2) The authorization of the project is contingent upon the appropriation of funds in the annual Budget Act to pay for the state's share of costs associated with the project.

(b) The Coachella Valley Water District shall give assurances satisfactory to the Secretary of the Army that the local cooperation required by that final report will be furnished by the district in connection with the project for flood control adopted and authorized in subdivision (a).

(c) The Coachella Valley Water District, in conjunction with the Department of the Army, shall carry out the plans and project and may make modifications and amendments to the plans for the purposes of Chapter 1 (commencing with 12570) and this chapter.

(d) The Coachella Valley Water District shall enter into an agreement with the department pursuant to which the district agrees to indemnify and hold and save the state, its officers, agents, and employees harmless from any and all liability for damages that may arise out of the planning, design, construction, operation, maintenance, repair, and rehabilitation of the project.

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 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.

CHAPTER 638

An act to add Section 247.1 to the Public Utilities Code, and to amend Section 41020 of the Revenue and Taxation Code, relating to telecommunications.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. The Legislature finds that the United States Congress has enacted the Mobile Telecommunications Sourcing Act for the purpose of establishing uniform nationwide sourcing rules for the state and local taxation of mobile telecommunications services. The federal act creates a uniform sourcing rule that was intended to be revenue-neutral among the states. In order to create a single, uniform sourcing rule, the federal act preempts, in part, state and local law. The Legislature desires to adopt implementing legislation with respect to certain tax laws enacted by this state, and to conform those tax laws to the federal uniform sourcing rule to the extent there is otherwise a conflict. By enacting this legislation, the Legislature is not, and is not intending to, enact any new taxes or to increase the tax rate or tax base of any tax.

SEC. 2. Section 247.1 is added to the Public Utilities Code, to read:

247.1. (a) The Mobile Telecommunications Sourcing Act (P.L. 106-252) was enacted for the purpose of establishing nationwide uniform sourcing rules for the imposition of state and local taxes, fees, and surcharges on mobile telecommunications services. In order to establish a single, uniform sourcing rule, the federal act partially preempted state and local law imposing taxes, fees, and surcharges on a mobile telecommunications services customer whose place of primary use is outside of the state in which the state and local taxes, fees, or surcharges are imposed.

(b) In accordance with the Mobile Telecommunications Sourcing Act, which is incorporated herein by reference, and notwithstanding Sections 280, 431, 739.3, 879, and 2881, the surcharges or fees under these sections do not apply to any charges for mobile telecommunications services billed to a customer where those services are provided, or deemed provided, to a customer whose place of primary use is outside this state. Mobile telecommunications services shall be deemed provided by a customer's home service provider to the customer if those services are provided in a taxing jurisdiction to the customer, and the charges for those services are billed by or for the customer's home service provider.

(c) For purposes of this section:

(1) ''Charges for mobile telecommunications services'' means any charge for, or associated with, the provision of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider, regardless of whether individual transmissions originate or terminate within the licensed service area of a home service provider.

(2) ''Customer'' means either (A) the person or entity that contracts with the home service provider for mobile telecommunications services, or (B) if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service. This paragraph applies only for the purpose of determining the place of primary use. The term ''customer'' does not include either (A) a reseller of mobile telecommunications service, or (B) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

(3) ''Home service provider'' means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(4) ''Licensed service area'' means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(5) ''Mobile telecommunications service'' means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999.

(6) ''Place of primary use'' means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, that must be:

(A) The residential street address or the primary business street address of the customer.

(B) Within the licensed area of the home service provider.

(7) (A) ''Reseller'' means a provider who purchases telecommunications services from another telecommunications service provider and then resells the services, or uses the services as a component part of, or integrates the purchased services into a mobile telecommunications service.

(B) ''Reseller'' does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(8) ''Serving carrier'' means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed area.

(9) ''Taxing jurisdiction'' means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

SEC. 3. Section 41020 of the Revenue and Taxation Code is amended to read:

41020. (a) A surcharge is hereby imposed on amounts paid by every person in the state for intrastate telephone communication service in this state commencing on July 1, 1977.

(b) The surcharge imposed shall be at the rate of one-half of 1 percent of the charges made for such services to and including November 1, 1982, and thereafter at a rate fixed pursuant to Article 2 (commencing with Section 41030).

(c) The surcharge shall be paid by the service user as hereinafter provided.

(d) In accordance with the Mobile Telecommunications Sourcing Act (P.L. 106-252), which is incorporated herein by reference, the surcharge imposed under this section does not apply to any charges for mobile telecommunications services billed to a customer where those services are provided, or deemed provided, to a customer whose place of primary use is outside this state. Mobile telecommunications services shall be deemed provided by a customer's home service provider to the customer if those services are provided in a taxing jurisdiction to the customer, and the charges for those services are billed by or for the customer's home service provider.

(e) For purposes of this section:

(1) ''Charges for mobile telecommunications services'' means any charge for, or associated with, the provision of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider, regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(2) ''Customer'' means (A) the person or entity that contracts with the home service provider for mobile telecommunications services, or (B) if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications

service. This paragraph applies only for the purpose of determining the place of primary use. The term ''customer'' does not include (A) a reseller of mobile telecommunications service, or (B) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

(3) ''Home service provider'' means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(4) ''Licensed service area'' means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(5) ''Mobile telecommunications service'' means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999.

(6) ''Place of primary use'' means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, that must be:

(A) The residential street address or the primary business street address of the customer.

(B) Within the licensed service area of the home service provider.

(7) (A) ''Reseller'' means a provider who purchases telecommunications services from another telecommunications service provider and then resells the services, or uses the services as a component part of, or integrates the purchased services into, a mobile telecommunications service.

(B) ''Reseller'' does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(8) ''Serving carrier'' means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed area.

(9) ''Taxing jurisdiction'' means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

SEC. 4. In conformity with the federal Mobile Telecommunications Sourcing Act, this bill applies only to customer bills issued on or after August 1, 2002.

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CHAPTER 639

An act to amend Section 4582.7 of the Public Resources Code, relating to timber harvesting plans.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 4582.7 of the Public Resources Code is amended to read:

4582.7. (a) The director shall have 30 days from the date that the initial inspection is completed, (10 of these days shall follow the date of final interagency review) or, if the director determines that the inspection need not be made, 15 days from the date of filing, as specified in Section 4604, or a longer period mutually agreed upon by the director and the person submitting the timber harvesting plan, to review the plan and take public comments. After the final review and public comment period has ended, the director shall have up to 15 working days, or a longer period mutually agreed upon by the director and the person submitting the plan, to review the public input, to consider recommendations and mitigation measures of other agencies, to respond in writing to the issues raised, and to determine if the plan is in conformance with the rules and regulations of the board and with this chapter.

(b) If the director determines that the timber harvesting plan is not in conformance with the rules and regulations of the board or with this chapter, the director shall return the plan, stating his or her reasons in writing, and advising the person submitting the plan of the person's right to a hearing before the board, and timber operations shall not commence.

(c) A person to whom a timber harvesting plan is returned may, within 10 days from the date of receipt of the plan, request of the board a public hearing before the board. The board shall schedule a public hearing to review the plan to determine if the plan is in conformance with the rules and regulations of the board and with this chapter. Timber operations shall await board approval of the plan. Board action shall occur within 30 days from the date of the filing of the appeal, or a longer period mutually agreed upon by the board and the person filing the appeal.

(d) If the timber harvesting plan is not approved on appeal to the board, the plan may be found to be in conformance by the director within 10 days from the date of the board action, provided that the plan is brought into full conformance with the rules and regulations of the board and with this chapter. If the director does not act within 25 days, or a longer period mutually agreed upon by the director and the person submitting the plan, timber operations may commence pursuant to the

plan, and all provisions of the plan shall be followed as provided in this chapter.

(e) Upon the request of a responsible agency, the director shall consult with that agency, pursuant to this chapter, but the director, or his or her designee within the department, shall have the final authority to determine whether a timber harvesting plan is in conformance with the rules and regulations of the board and with this chapter.

SEC. 1.5. Section 4582.7 of the Public Resources Code is amended to read:

4582.7. (a) The director shall have 30 days from the date that the initial inspection is completed, (10 of these days shall follow the date of final interagency review) or, if the director determines that the inspection need not be made, 15 days from the date of filing, as specified in Section 4604, or a longer period mutually agreed upon by the director and the person submitting the timber harvesting plan, to review the plan and take public comments. After the final review and public comment period has ended, the director shall have up to 15 working days, or a longer period mutually agreed upon by the director and the person submitting the plan, to review the public input, to consider recommendations and mitigation measures of other agencies, to respond in writing to the issues raised, and to determine if the plan is in conformance with the rules and regulations of the board and with this chapter.

(b) If the director determines that the timber harvesting plan is not in conformance with the rules and regulations of the board or with this chapter, the director shall return the plan, stating his or her reasons in writing, and advising the person submitting the plan of the person's right to a hearing before the board, and timber operations shall not commence.

(c) A person to whom a timber harvesting plan is returned may, within 10 days from the date of receipt of the plan, request of the board a public hearing before the board. With the concurrence of the person to whom a timber harvesting plan is returned, the board of supervisors of a county in which the proposed timber operations are located may also request of the board a public hearing before the board on behalf of the plan submitter. The board shall schedule a public hearing to review the plan to determine if the plan is in conformance with the rules and regulations of the board and with this chapter. Timber operations shall await board approval of the plan. Board action shall occur within 30 days from the date of the filing of the appeal, or a longer period mutually agreed upon by the board and the person filing the appeal.

(d) If the timber harvesting plan is not approved on appeal to the board, the plan may be found to be in conformance by the director within 10 days from the date of the board action, provided that the plan is brought into full conformance with the rules and regulations of the board and with this chapter. If the director does not act within 25 days, or a

longer period mutually agreed upon by the director and the person submitting the plan, timber operations may commence pursuant to the plan, and all provisions of the plan shall be followed as provided in this chapter.

(e) Upon the request of a responsible agency, the director shall consult with that agency, pursuant to this chapter, but the director, or his or her designee within the department, shall have the final authority to determine whether a timber harvesting plan is in conformance with the rules and regulations of the board and with this chapter.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 4582.7 of the Public Resources Code proposed by both this bill and SB 540. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 4582.7 of the Public Resources Code, and (3) this bill is enacted after SB 540, in which case Section 1 of this bill shall not become operative.

CHAPTER 640

An act to amend Sections 1206.5 and 1241 of the Business and Professions Code, relating to clinical laboratory technology.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 1206.5 of the Business and Professions Code is amended to read:

1206.5. (a) Notwithstanding subdivision (b) of Section 1206 and except as otherwise provided in Section 1241, no person shall perform a clinical laboratory test or examination classified as waived under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A person licensed under Chapter 6 (commencing with Section 2700).

(7) A person licensed under Chapter 6.5 (commencing with Section 2840).

(8) A perfusionist if authorized by and performed in compliance with Section 2590.

(9) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(10) A medical assistant, as defined in Section 2069, if the waived test is performed pursuant to a specific authorization meeting the requirements of Section 2069.

(11) A pharmacist, if ordering drug therapy-related laboratory tests in compliance with clause (ii) of subparagraph (A) of paragraph (5) of, or subparagraph (B) of paragraph (4) of, subdivision (a) of Section 4052.

(12) Other health care personnel providing direct patient care.

(b) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of moderate complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A person licensed under Chapter 6 (commencing with Section 2700).

(7) A perfusionist if authorized by and performed in compliance with Section 2590.

(8) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(9) A person performing nuclear medicine technology if authorized by and performed in compliance with Article 6 (commencing with Section 107115) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.

(10) Any person if performing blood gas analysis in compliance with Section 1245.

(11) (A) A person certified or licensed as an ''Emergency Medical Technician II'' or paramedic pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code while providing prehospital medical care, a person licensed as a psychiatric technician under Chapter 10 (commencing with Section 4500) of Division 2, as a vocational nurse pursuant to Chapter 6.5 (commencing with Section 2840) of Division 2, or as a midwife licensed pursuant to Article 24 (commencing with Section 2505) of Chapter 5 of Division 2, or certified by the department pursuant to Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations as a nurse assistant or a home health aide, who provides direct patient care, if the person is performing the test as an adjunct to the provision of direct patient care by the person, is utilizing a point-of-care laboratory testing device at a site for which a laboratory license or registration has been issued, meets the minimum clinical laboratory education, training, and experience requirements set forth in regulations adopted by the department, and has demonstrated to the satisfaction of the laboratory director that he or she is competent in the operation of the point-of-care laboratory testing device for each analyte to be reported.

(B) Prior to being authorized by the laboratory director to perform laboratory tests or examinations, testing personnel identified in subparagraph (A) shall participate in a preceptor program until they are able to perform the clinical laboratory tests or examinations authorized in this section with results that are deemed accurate and skills that are deemed competent by the preceptor. For the purposes of this section, a ''preceptor program'' means an organized system that meets regulatory requirements in which a preceptor provides and documents personal observation and critical evaluation, including review of accuracy, reliability, and validity, of laboratory testing performed.

(12) Any other person within a physician office laboratory if the test is performed under the supervision of the patient's physician and surgeon or podiatrist who shall be accessible to the laboratory to provide onsite, telephone, or electronic consultation as needed, and shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of the clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(13) A pharmacist, if ordering drug therapy-related laboratory tests in compliance with clause (ii) of subparagraph (A) of paragraph (5) of, or subparagraph (B) of paragraph (4) of, subdivision (a) of Section 4052.

(c) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of high complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory if the test or examination is within a specialty or subspecialty authorized by the person's licensure.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code if the test or examination is within a specialty or subspecialty authorized by the person's certification.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A perfusionist if authorized by and performed in compliance with Section 2590.

(7) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(8) A person performing nuclear medicine technology if authorized by and performed in compliance with Article 6 (commencing with Section 107115) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.

(9) Any person if performing blood gas analysis in compliance with Section 1245.

(10) Any other person within a physician office laboratory if the test is performed under the onsite supervision of the patient's physician and surgeon or podiatrist who shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(d) Clinical laboratory examinations classified as provider-performed microscopy under CLIA may be personally

performed using a brightfield or phase/contrast microscope by one of the following practitioners:

(1) A licensed physician and surgeon using the microscope during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group medical practice of which the physician is a member or employee.

(2) A nurse midwife holding a certificate as specified by Section 2746.5, a licensed nurse practitioner as specified in Section 2835.5, or a licensed physician assistant acting under the supervision of a physician pursuant to Section 3502 using the microscope during the patient's visit on a specimen obtained from his or her own patient or from the patient of a clinic, group medical practice, or other health care provider of which the certified nurse midwife, licensed nurse practitioner, or licensed physician assistant is an employee.

(3) A licensed dentist using the microscope during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group dental practice of which the dentist is a member or an employee.

SEC. 1.5. Section 1206.5 of the Business and Professions Code is amended to read:

1206.5. (a) Notwithstanding subdivision (b) of Section 1206 and except as otherwise provided in Section 1241, no person shall perform a clinical laboratory test or examination classified as waived under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A person licensed under Chapter 6 (commencing with Section 2700).

(7) A person licensed under Chapter 6.5 (commencing with Section 2840).

(8) A perfusionist if authorized by and performed in compliance with Section 2590.

(9) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(10) A medical assistant, as defined in Section 2069, if the waived test is performed pursuant to a specific authorization meeting the requirements of Section 2069.

(11) A pharmacist, as defined in Section 4036, if ordering drug therapy-related laboratory tests in compliance with clause (ii) of subparagraph (A) of paragraph (5) of, or subparagraph (B) of paragraph (4) of, subdivision (a) of Section 4052, or if performing skin puncture in the course of performing routine patient assessment procedures in compliance with Section 4052.1.

(12) Other health care personnel providing direct patient care.

(b) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of moderate complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A person licensed under Chapter 6 (commencing with Section 2700).

(7) A perfusionist if authorized by and performed in compliance with Section 2590.

(8) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(9) A person performing nuclear medicine technology if authorized by and performed in compliance with Article 6 (commencing with Section 107115) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.

(10) Any person if performing blood gas analysis in compliance with Section 1245.

(11) (A) A person certified or licensed as an ‘‘Emergency Medical Technician II’’ or paramedic pursuant to Division 2.5 (commencing with

Section 1797) of the Health and Safety Code while providing prehospital medical care, a person licensed as a psychiatric technician under Chapter 10 (commencing with Section 4500) of Division 2, as a vocational nurse pursuant to Chapter 6.5 (commencing with Section 2840) of Division 2, or as a midwife licensed pursuant to Article 24 (commencing with Section 2505) of Chapter 5 of Division 2, or certified by the department pursuant to Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations as a nurse assistant or a home health aide, who provides direct patient care, if the person is performing the test as an adjunct to the provision of direct patient care by the person, is utilizing a point-of-care laboratory testing device at a site for which a laboratory license or registration has been issued, meets the minimum clinical laboratory education, training, and experience requirements set forth in regulations adopted by the department, and has demonstrated to the satisfaction of the laboratory director that he or she is competent in the operation of the point-of-care laboratory testing device for each analyte to be reported.

(B) Prior to being authorized by the laboratory director to perform laboratory tests or examinations, testing personnel identified in subparagraph (A) shall participate in a preceptor program until they are able to perform the clinical laboratory tests or examinations authorized in this section with results that are deemed accurate and skills that are deemed competent by the preceptor. For the purposes of this section, a ''preceptor program'' means an organized system that meets regulatory requirements in which a preceptor provides and documents personal observation and critical evaluation, including review of accuracy, reliability, and validity, of laboratory testing performed.

(12) Any other person within a physician office laboratory if the test is performed under the supervision of the patient's physician and surgeon or podiatrist who shall be accessible to the laboratory to provide onsite, telephone, or electronic consultation as needed, and shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of the clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(13) A pharmacist, if ordering drug therapy-related laboratory tests in compliance with clause (ii) of subparagraph (A) of paragraph (5) of, or subparagraph (B) of paragraph (4) of, subdivision (a) of Section 4052.

(c) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of high complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy

of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory if the test or examination is within a specialty or subspecialty authorized by the person's licensure.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code if the test or examination is within a specialty or subspecialty authorized by the person's certification.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A perfusionist if authorized by and performed in compliance with Section 2590.

(7) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(8) A person performing nuclear medicine technology if authorized by and performed in compliance with Article 6 (commencing with Section 107115) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.

(9) Any person if performing blood gas analysis in compliance with Section 1245.

(10) Any other person within a physician office laboratory if the test is performed under the onsite supervision of the patient's physician and surgeon or podiatrist who shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(d) Clinical laboratory examinations classified as provider-performed microscopy under CLIA may be personally performed using a brightfield or phase/contrast microscope by one of the following practitioners:

(1) A licensed physician and surgeon using the microscope during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group medical practice of which the physician is a member or employee.

(2) A nurse midwife holding a certificate as specified by Section 2746.5, a licensed nurse practitioner as specified in Section 2835.5, or a licensed physician assistant acting under the supervision of a physician

pursuant to Section 3502 using the microscope during the patient's visit on a specimen obtained from his or her own patient or from the patient of a clinic, group medical practice, or other health care provider of which the certified nurse midwife, licensed nurse practitioner, or licensed physician assistant is an employee.

(3) A licensed dentist using the microscope during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group dental practice of which the dentist is a member or an employee.

SEC. 2. Section 1241 of the Business and Professions Code is amended to read:

1241. (a) This chapter applies to all clinical laboratories in California or receiving biological specimens originating in California for the purpose of performing a clinical laboratory test or examination, and to all persons performing clinical laboratory tests or examinations or engaging in clinical laboratory practice in California or on biological specimens originating in California, except as provided in subdivision (b).

(b) This chapter shall not apply to any of the following clinical laboratories, or to persons performing clinical laboratory tests or examinations in any of the following clinical laboratories:

(1) Those owned and operated by the United States of America, or any department, agency, or official thereof acting in his or her official capacity to the extent that the Secretary of the federal Department of Health and Human Services has modified the application of CLIA requirements to those laboratories.

(2) Public health laboratories, as defined in Section 1206.

(3) Those that perform clinical laboratory tests or examinations for forensic purposes only.

(4) Those that perform clinical laboratory tests or examinations for research and teaching purposes only and do not report or use patient-specific results for the diagnosis, prevention, or treatment of any disease or impairment of, or for the assessment of the health of, an individual.

(5) Those that perform clinical laboratory tests or examinations certified by the National Institutes on Drug Abuse only for those certified tests or examinations. However, all other clinical laboratory tests or examinations conducted by the laboratory are subject to this chapter.

(6) Those that register with the State Department of Health Services pursuant to subdivision (c) to perform blood glucose testing for the purposes of monitoring a minor child diagnosed with diabetes if the person performing the test has been entrusted with the care and control of the child by the child's parent or legal guardian and provided that all of the following occur:

(A) The blood glucose monitoring test is performed with a blood glucose monitoring instrument that has been approved by the federal Food and Drug Administration for sale over the counter to the public without a prescription.

(B) The person has been provided written instructions by the child's health care provider or an agent of the child's health care provider in accordance with the manufacturer's instructions on the proper use of the monitoring instrument and the handling of any lancets, test strips, cotton balls, or other items used during the process of conducting a blood glucose test.

(C) The person, receiving written authorization from the minor's parent or legal guardian, complies with written instructions from the child's health care provider, or an agent of the child's health care provider, regarding the performance of the test and the operation of the blood glucose monitoring instrument, including how to determine if the results are within the normal or therapeutic range for the child, and any restriction on activities or diet that may be necessary.

(D) The person complies with specific written instructions from the child's health care provider or an agent of the child's health care provider regarding the identification of symptoms of hypoglycemia or hyperglycemia, and actions to be taken when results are not within the normal or therapeutic range for the child. The instructions shall also contain the telephone number of the child's health care provider and the telephone number of the child's parent or legal guardian.

(E) The person records the results of the blood glucose tests and provides them to the child's parent or legal guardian on a daily basis.

(F) The person complies with universal precautions when performing the testing and posts a list of the universal precautions in a prominent place within the proximity where the test is conducted.

(7) Those individuals who perform clinical laboratory tests or examinations, approved by the federal Food and Drug Administration for sale to the public without a prescription in the form of an over-the-counter test kit, on their own bodies or on their minor children or legal wards.

(8) Those certified emergency medical technicians and licensed paramedics providing basic life support services or advanced life support services as defined in Section 1797.52 of the Health and Safety Code who perform only blood glucose tests that are classified as waived clinical laboratory tests under CLIA, if the provider of those services obtains a valid certificate of waiver and complies with all other requirements for the performance of waived clinical laboratory tests under applicable federal regulations.

(c) Any place where blood glucose testing is performed pursuant to paragraph (6) of subdivision (b) shall register by notifying the State

Department of Health Services in writing no later than 30 days after testing has commenced. Registrants pursuant to this subdivision shall not be required to pay any registration or renewal fees nor shall they be subject to routine inspection by the State Department of Health Services.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 1206.5 of the Business and Professions Code proposed by both this bill and AB 586. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 1206.5 of the Business and Professions Code, and (3) this bill is enacted after AB 586, in which case Section 1 of this bill shall not become operative.

CHAPTER 641

An act to amend Sections 109935, 109951, and 109971 of the Health and Safety Code, relating to health.

[Approved by Governor October 8, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 109935 of the Health and Safety Code is amended to read:

109935. ''Food'' means either of the following:

(a) Any article used or intended for use for food, drink, confection, condiment, or chewing gum by man or other animal.

(b) Any article used or intended for use as a component of any article designated in subdivision (a).

SEC. 2. Section 109951 of the Health and Safety Code is amended to read:

109951. ''Infant formula'' shall have the same definition as that term is used in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 321(z)). The department shall review all changes to the federal definition of ''infant formula'' before those changes are incorporated by reference pursuant to this section. Within six months after the effective date of any changes to the federal definition, the department shall complete its review of the changes, and submit a report to the Senate Health and Human Services Committee and the Assembly Health Committee that describes the changes and makes a recommendation as to whether it is appropriate to incorporate the changes by reference pursuant to this section. Any change to the federal definition shall take effect pursuant to this section one year after the effective date of the

federal change, unless a law that specifically prohibits the change from taking effect is enacted and becomes effective.

SEC. 3. Section 109971 of the Health and Safety Code is amended to read:

109971. ''Medical food'' means any product that meets the definition of medical food in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360ee(b)(3)). The department shall review all changes to the federal definition of ''medical food'' before those changes are incorporated by reference pursuant to this section. Within six months after the effective date of any changes to the federal definition, the department shall complete its review of the changes, and submit a report to the Senate Health and Human Services Committee and the Assembly Health Committee that describes the changes and makes a recommendation as to whether it is appropriate to incorporate the changes by reference pursuant to this section. Any change to the federal definition shall take effect pursuant to this section one year after the effective date of the federal change, unless a law that specifically prohibits the change from taking effect is enacted and becomes effective.

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.

CHAPTER 642

An act to amend Section 11010 of the Business and Professions Code, and to amend Section 65867.5 of, and to add Sections 66455.3 and 66473.7 to, the Government Code, relating to land use.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 11010 of the Business and Professions Code is amended to read:

11010. (a) Except as otherwise provided pursuant to subdivision (c) or elsewhere in this chapter, any person who intends to offer subdivided lands within this state for sale or lease shall file with the

Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire on a form prepared by the department.

(b) The notice of intention shall contain the following information about the subdivided lands and the proposed offering:

(1) The name and address of the owner.

(2) The name and address of the subdivider.

(3) The legal description and area of lands.

(4) A true statement of the condition of the title to the land, particularly including all encumbrances thereon.

(5) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any contracts intended to be used.

(6) A true statement of the provisions, if any, that have been made for public utilities in the proposed subdivision, including water, electricity, gas, telephone, and sewerage facilities. For subdivided lands that were subject to the imposition of a condition pursuant to subdivision (b) of Section 66473.7 of the Government Code, the true statement of the provisions made for water shall be satisfied by submitting a copy of the written verification of the available water supply obtained pursuant to Section 66473.7 of the Government Code.

(7) A true statement of the use or uses for which the proposed subdivision will be offered.

(8) A true statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision.

(9) A true statement of the amount of indebtedness that is a lien upon the subdivision or any part thereof, and that was incurred to pay for the construction of any onsite or offsite improvement, or any community or recreational facility.

(10) A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area, assessment district, or community facilities district within the boundaries of which, the subdivision, or any part thereof, is located, and that is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to that subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision, or any part thereof.

(11) (A) As to each school district serving the subdivision, a statement from the appropriate district that indicates the location of each high school, junior high school, and elementary school serving the subdivision, or documentation that a statement to that effect has been requested from the appropriate school district.

(B) In the event that, as of the date the notice of intention and application for issuance of a public report are otherwise deemed to be qualitatively and substantially complete pursuant to Section 11010.2, the statement described in subparagraph (A) has not been provided by any school district serving the subdivision, the person who filed the notice of intention and application for issuance of a public report immediately shall provide the department with the name, address, and telephone number of that district.

(12) The location of all existing airports, and of all proposed airports shown on the general plan of any city or county, located within two statute miles of the subdivision.

(13) A true statement, if applicable, referencing any soils or geologic report or soils and geologic reports that have been prepared specifically for the subdivision.

(14) A true statement of whether or not fill is used, or is proposed to be used in the subdivision and a statement giving the name and the location of the public agency where information concerning soil conditions in the subdivision is available.

(15) Any other information that the owner, his or her agent, or the subdivider may desire to present.

(c) The commissioner may, by regulation, or on the basis of the particular circumstances of a proposed offering, waive the requirement of the submission of a completed questionnaire if the commissioner determines that prospective purchasers or lessees of the subdivision interests to be offered will be adequately protected through the issuance of a public report based solely upon information contained in the notice of intention.

SEC. 2. Section 65867.5 of the Government Code is amended to read:

65867.5. (a) A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum.

(b) A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.

(c) A development agreement that includes a subdivision, as defined in Section 66473.7, shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of Section 66473.7.

SEC. 3. Section 66455.3 is added to the Government Code, to read:

66455.3. Not later than five days after a city or county has determined that a tentative map application for a proposed subdivision, as defined in Section 66473.7, is complete pursuant to Section 65943, the local agency shall send a copy of the application to any water supplier

that is, or may become, a public water system, as defined in Section 10912 of the Water Code, that may supply water for the subdivision.

SEC. 4. Section 66473.7 is added to the Government Code, to read:

66473.7. (a) For the purposes of this section, the following definitions apply:

(1) ''Subdivision'' means a proposed residential development of more than 500 dwelling units, except that for a public water system that has fewer than 5,000 service connections, ''subdivision'' means any proposed residential development that would account for an increase of 10 percent or more in the number of the public water system's existing service connections.

(2) ''Sufficient water supply'' means the total water supplies available during normal, single-dry, and multiple-dry years within a 20-year projection that will meet the projected demand associated with the proposed subdivision, in addition to existing and planned future uses, including, but not limited to, agricultural and industrial uses. In determining ''sufficient water supply,'' all of the following factors shall be considered:

(A) The availability of water supplies over a historical record of at least 20 years.

(B) The applicability of an urban water shortage contingency analysis prepared pursuant to Section 10632 of the Water Code that includes actions to be undertaken by the public water system in response to water supply shortages.

(C) The reduction in water supply allocated to a specific water use sector pursuant to a resolution or ordinance adopted, or a contract entered into, by the public water system, as long as that resolution, ordinance, or contract does not conflict with Section 354 of the Water Code.

(D) The amount of water that the water supplier can reasonably rely on receiving from other water supply projects, such as conjunctive use, reclaimed water, water conservation, and water transfer, including programs identified under federal, state, and local water initiatives such as CALFED and Colorado River tentative agreements, to the extent that these water supplies meet the criteria of subdivision (d).

(3) ''Public water system'' means the water supplier that is, or may become as a result of servicing the subdivision included in a tentative map pursuant to subdivision (b), a public water system, as defined in Section 10912 of the Water Code, that may supply water for a subdivision.

(b) (1) The legislative body of a city or county or the advisory agency, to the extent that it is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, shall include as a condition in any tentative map that includes a subdivision a

requirement that a sufficient water supply shall be available. Proof of the availability of a sufficient water supply shall be requested by the subdivision applicant or local agency, at the discretion of the local agency, and shall be based on written verification from the applicable public water system within 90 days of a request.

(2) If the public water system fails to deliver the written verification as required by this section, the local agency or any other interested party may seek a writ of mandamus to compel the public water system to comply.

(3) If the written verification provided by the applicable public water system indicates that the public water system is unable to provide a sufficient water supply that will meet the projected demand associated with the proposed subdivision, then the local agency may make a finding, after consideration of the written verification by the applicable public water system, that additional water supplies not accounted for by the public water system are, or will be, available prior to completion of the subdivision that will satisfy the requirements of this section. This finding shall be made on the record and supported by substantial evidence.

(4) If the written verification is not provided by the public water system, notwithstanding the local agency or other interested party securing a writ of mandamus to compel compliance with this section, then the local agency may make a finding that sufficient water supplies are, or will be, available prior to completion of the subdivision that will satisfy the requirements of this section. This finding shall be made on the record and supported by substantial evidence.

(c) The applicable public water system's written verification of its ability or inability to provide a sufficient water supply that will meet the projected demand associated with the proposed subdivision as required by subdivision (b) shall be supported by substantial evidence. The substantial evidence may include, but is not limited to, any of the following:

(1) The public water system's most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code.

(2) A water supply assessment that was completed pursuant to Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code.

(3) Other information relating to the sufficiency of the water supply that contains analytical information that is substantially similar to the assessment required by Section 10635 of the Water Code.

(d) When the written verification pursuant to subdivision (b) relies on projected water supplies that are not currently available to the public water system, to provide a sufficient water supply to the subdivision, the

written verification as to those projected water supplies shall be based on all of the following elements, to the extent each is applicable:

(1) Written contracts or other proof of valid rights to the identified water supply that identify the terms and conditions under which the water will be available to serve the proposed subdivision.

(2) Copies of a capital outlay program for financing the delivery of a sufficient water supply that has been adopted by the applicable governing body.

(3) Securing of applicable federal, state, and local permits for construction of necessary infrastructure associated with supplying a sufficient water supply.

(4) Any necessary regulatory approvals that are required in order to be able to convey or deliver a sufficient water supply to the subdivision.

(e) If there is no public water system, the local agency shall make a written finding of sufficient water supply based on the evidentiary requirements of subdivisions (c) and (d) and identify the mechanism for providing water to the subdivision.

(f) In making any findings or determinations under this section, a local agency, or designated advisory agency, may work in conjunction with the project applicant and the public water system to secure water supplies sufficient to satisfy the demands of the proposed subdivision. If the local agency secures water supplies pursuant to this subdivision, which supplies are acceptable to and approved by the governing body of the public water system as suitable for delivery to customers, it shall work in conjunction with the public water system to implement a plan to deliver that water supply to satisfy the long-term demands of the proposed subdivision.

(g) The written verification prepared under this section shall also include a description, to the extent that data is reasonably available based on published records maintained by federal and state agencies, and public records of local agencies, of the reasonably foreseeable impacts of the proposed subdivision on the availability of water resources for agricultural and industrial uses within the public water system's service area that are not currently receiving water from the public water system but are utilizing the same sources of water. To the extent that those reasonably foreseeable impacts have previously been evaluated in a document prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or the National Environmental Policy Act (Public Law 91-190) for the proposed subdivision, the public water system may utilize that information in preparing the written verification.

(h) Where a water supply for a proposed subdivision includes groundwater, the public water system serving the proposed subdivision shall evaluate, based on substantial evidence, the extent to which it or

the landowner has the right to extract the additional groundwater needed to supply the proposed subdivision. Nothing in this subdivision is intended to modify state law with regard to groundwater rights.

(i) This section shall not apply to any residential project proposed for a site that is within an urbanized area and has been previously developed for urban uses, or where the immediate contiguous properties surrounding the residential project site are, or previously have been, developed for urban uses, or housing projects that are exclusively for very low and low-income households.

(j) The determinations made pursuant to this section shall be consistent with the obligation of a public water system to grant a priority for the provision of available and future water resources or services to proposed housing developments that help meet the city's or county's share of the regional housing needs for lower income households, pursuant to Section 65589.7.

(k) The County of San Diego shall be deemed to comply with this section if the Office of Planning and Research determines that all of the following conditions have been met:

(1) A regional growth management strategy that provides for a comprehensive regional strategy and a coordinated economic development and growth management program has been developed pursuant to Proposition C as approved by the voters of the County of San Diego in November 1988, which required the development of a regional growth management plan and directed the establishment of a regional planning and growth management review board.

(2) Each public water system, as defined in Section 10912 of the Water Code, within the County of San Diego has adopted an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) of the Water Code.

(3) The approval or conditional approval of tentative maps for subdivisions, as defined in this section, by the County of San Diego and the cities within the county requires written communications to be made by the public water system to the city or county, in a format and with content that is substantially similar to the requirements contained in this section, with regard to the availability of a sufficient water supply, or the reliance on projected water supplies to provide a sufficient water supply, for a proposed subdivision.

(*l*) Nothing in this section shall preclude the legislative body of a city or county, or the designated advisory agency, at the request of the applicant, from making the determinations required in this section earlier than required pursuant to subdivision (a).

(m) Nothing in this section shall be construed to create a right or entitlement to water service or any specific level of water service.

(n) Nothing in this section is intended to change existing law concerning a public water system's obligation to provide water service to its existing customers or to any potential future customers.

(o) Any action challenging the sufficiency of the public water system's written verification of a sufficient water supply shall be governed by Section 66499.37.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 643

An act to amend Section 21151.9 of the Public Resources Code, and to amend Sections 10631, 10656, 10910, 10911, 10912, and 10915 of, to repeal Section 10913 of, and to add and repeal Section 10657 of, the Water Code, relating to water.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 9, 2001.]

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

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

(1) The length and severity of droughts in California cannot be predicted with any accuracy.

(2) There are various factors that affect the ability to ensure that adequate water supplies are available to meet all of California's water demands, now and in the future.

(3) Because of these factors, it is not possible to guarantee a permanent water supply for all water users in California in the amounts requested.

(4) Therefore, it is critical that California's water agencies carefully assess the reliability of their water supply and delivery systems.

(5) Furthermore, California's overall water delivery system has become less reliable over the last 20 years because demand for water has continued to grow while new supplies have not been developed in amounts sufficient to meet the increased demand.

(6) There are a variety of measures for developing new water supplies including water reclamation, water conservation, conjunctive use, water

transfers, seawater desalination, and surface water and groundwater storage.

(7) With increasing frequency, California's water agencies are required to impose water rationing on their residential and business customers during this state's frequent and severe periods of drought.

(8) The identification and development of water supplies needed during multiple-year droughts is vital to California's business climate, as well as to the health of the agricultural industry, environment, rural communities, and residents who continue to face the possibility of severe water cutbacks during water shortage periods.

(9) A recent study indicates that the water supply and land use planning linkage, established by Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code, has not been implemented in a manner that ensures the appropriate level of communication between water agencies and planning agencies, and this act is intended to remedy that deficiency in communication.

(b) It is the intent of the Legislature to strengthen the process pursuant to which local agencies determine the adequacy of existing and planned future water supplies to meet existing and planned future demands on those water supplies.

SEC. 2. Section 21151.9 of the Public Resources Code is amended to read:

21151.9. Whenever a city or county determines that a project, as defined in Section 10912 of the Water Code, is subject to this division, it shall comply with Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code.

SEC. 3. Section 10631 of the Water Code is amended to read:

10631. A plan shall be adopted in accordance with this chapter and shall do all of the following:

(a) Describe the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier's water management planning. The projected population estimates shall be based upon data from the state, regional, or local service agency population projections within the service area of the urban water supplier and shall be in five-year increments to 20 years or as far as data is available.

(b) Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments as described in subdivision (a). If groundwater is identified as an existing or planned source of water available to the supplier, all of the following information shall be included in the plan:

(1) A copy of any groundwater management plan adopted by the urban water supplier, including plans adopted pursuant to Part 2.75

(commencing with Section 10750), or any other specific authorization for groundwater management.

(2) A description of any groundwater basin or basins from which the urban water supplier pumps groundwater. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the urban water supplier has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current official departmental bulletin that characterizes the condition of the groundwater basin, and a detailed description of the efforts being undertaken by the urban water supplier to eliminate the long-term overdraft condition.

(3) A detailed description and analysis of the amount and location of groundwater pumped by the urban water supplier for the past five years. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(4) A detailed description and analysis of the location, amount, and sufficiency of groundwater that is projected to be pumped by the urban water supplier. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(c) Describe the reliability of the water supply and vulnerability to seasonal or climatic shortage, to the extent practicable, and provide data for each of the following:

(1) An average water year.

(2) A single dry water year.

(3) Multiple dry water years.

For any water source that may not be available at a consistent level of use, given specific legal, environmental, water quality, or climatic factors, describe plans to replace that source with alternative sources or water demand management measures, to the extent practicable.

(d) Describe the opportunities for exchanges or transfers of water on a short-term or long-term basis.

(e) (1) Quantify, to the extent records are available, past and current water use, over the same five-year increments described in subdivision (a), and projected water use, identifying the uses among water use sectors, including, but not necessarily limited to, all of the following uses:

(A) Single-family residential.

(B) Multifamily.

(C) Commercial.

(D) Industrial.

(E) Institutional and governmental.

(F) Landscape.

(G) Sales to other agencies.

(H) Saline water intrusion barriers, groundwater recharge, or conjunctive use, or any combination thereof.

(I) Agricultural.

(2) The water use projections shall be in the same five-year increments as described in subdivision (a).

(f) Provide a description of the supplier's water demand management measures. This description shall include all of the following:

(1) A description of each water demand management measure that is currently being implemented, or scheduled for implementation, including the steps necessary to implement any proposed measures, including, but not limited to, all of the following:

(A) Water survey programs for single-family residential and multifamily residential customers.

(B) Residential plumbing retrofit.

(C) System water audits, leak detection, and repair.

(D) Metering with commodity rates for all new connections and retrofit of existing connections.

(E) Large landscape conservation programs and incentives.

(F) High-efficiency washing machine rebate programs.

(G) Public information programs.

(H) School education programs.

(I) Conservation programs for commercial, industrial, and institutional accounts.

(J) Wholesale agency programs.

(K) Conservation pricing.

(L) Water conservation coordinator.

(M) Water waste prohibition.

(N) Residential ultra-low-flush toilet replacement programs.

(2) A schedule of implementation for all water demand management measures proposed or described in the plan.

(3) A description of the methods, if any, that the supplier will use to evaluate the effectiveness of water demand management measures implemented or described under the plan.

(4) An estimate, if available, of existing conservation savings on water use within the supplier's service area, and the effect of such savings on the supplier's ability to further reduce demand.

(g) An evaluation of each water demand management measure listed in paragraph (1) of subdivision (f) that is not currently being implemented or scheduled for implementation. In the course of the evaluation, first consideration shall be given to water demand

management measures, or combination of measures, that offer lower incremental costs than expanded or additional water supplies. This evaluation shall do all of the following:

(1) Take into account economic and noneconomic factors, including environmental, social, health, customer impact, and technological factors.

(2) Include a cost-benefit analysis, identifying total benefits and total costs.

(3) Include a description of funding available to implement any planned water supply project that would provide water at a higher unit cost.

(4) Include a description of the water supplier's legal authority to implement the measure and efforts to work with other relevant agencies to ensure the implementation of the measure and to share the cost of implementation.

(h) Include a description of all water supply projects and water supply programs that may be undertaken by the urban water supplier to meet the total projected water use as established pursuant to subdivision (a) of Section 10635. The urban water supplier shall include a detailed description of expected future projects and programs, other than the demand management programs identified pursuant to paragraph (1) of subdivision (f), that the urban water supplier may implement to increase the amount of the water supply available to the urban water supplier in average, single dry, and multiple dry water years. The description shall identify specific projects and include a description of the increase in water supply that is expected to be available from each project. The description shall include an estimate with regard to the implementation timeline for each project or program.

(i) Urban water suppliers that are members of the California Urban Water Conservation Council and submit annual reports to that council in accordance with the ''Memorandum of Understanding Regarding Urban Water Conservation in California,'' dated September 1991, may submit the annual reports identifying water demand management measures currently being implemented, or scheduled for implementation, to satisfy the requirements of subdivisions (f) and (g).

SEC. 3.5. Section 10631 of the Water Code is amended to read:

10631. A plan shall be adopted in accordance with this chapter and shall do all of the following:

(a) Describe the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier's water management planning. The projected population estimates shall be based upon data from the state, regional, or local service agency population projections within the service area of the

urban water supplier and shall be in five-year increments to 20 years or as far as data is available.

(b) Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments as described in subdivision (a). If groundwater is identified as an existing or planned source of water available to the supplier, all of the following information shall be included in the plan:

(1) A copy of any groundwater management plan adopted by the urban water supplier, including plans adopted pursuant to Part 2.75 (commencing with Section 10750), or any other specific authorization for groundwater management.

(2) A description of any groundwater basin or basins from which the urban water supplier pumps groundwater. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the urban water supplier has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current official departmental bulletin that characterizes the condition of the groundwater basin, and a detailed description of the efforts being undertaken by the urban water supplier to eliminate the long-term overdraft condition.

(3) A detailed description and analysis of the location, amount, and sufficiency of groundwater pumped by the urban water supplier for the past five years. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(4) A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the urban water supplier. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(c) Describe the reliability of the water supply and vulnerability to seasonal or climatic shortage, to the extent practicable, and provide data for each of the following:

(1) An average water year.

(2) A single dry water year.

(3) Multiple dry water years.

For any water source that may not be available at a consistent level of use, given specific legal, environmental, water quality, or climatic factors, describe plans to supplement or replace that source with alternative sources or water demand management measures, to the extent practicable.

(d) Describe the opportunities for exchanges or transfers of water on a short-term or long-term basis.

(e) (1) Quantify, to the extent records are available, past and current water use, over the same five-year increments described in subdivision (a), and projected water use, identifying the uses among water use sectors, including, but not necessarily limited to, all of the following uses:

(A) Single-family residential.

(B) Multifamily.

(C) Commercial.

(D) Industrial.

(E) Institutional and governmental.

(F) Landscape.

(G) Sales to other agencies.

(H) Saline water intrusion barriers, groundwater recharge, or conjunctive use, or any combination thereof.

(I) Agricultural.

(2) The water use projections shall be in the same five-year increments as described in subdivision (a).

(f) Provide a description of the supplier's water demand management measures. This description shall include all of the following:

(1) A description of each water demand management measure that is currently being implemented, or scheduled for implementation, including the steps necessary to implement any proposed measures, including, but not limited to, all of the following:

(A) Water survey programs for single-family residential and multifamily residential customers.

(B) Residential plumbing retrofit.

(C) System water audits, leak detection, and repair.

(D) Metering with commodity rates for all new connections and retrofit of existing connections.

(E) Large landscape conservation programs and incentives.

(F) High-efficiency washing machine rebate programs.

(G) Public information programs.

(H) School education programs.

(I) Conservation programs for commercial, industrial, and institutional accounts.

(J) Wholesale agency programs.

(K) Conservation pricing.

(L) Water conservation coordinator.

(M) Water waste prohibition.

(N) Residential ultra-low-flush toilet replacement programs.

(2) A schedule of implementation for all water demand management measures proposed or described in the plan.

(3) A description of the methods, if any, that the supplier will use to evaluate the effectiveness of water demand management measures implemented or described under the plan.

(4) An estimate, if available, of existing conservation savings on water use within the supplier's service area, and the effect of the savings on the supplier's ability to further reduce demand.

(g) An evaluation of each water demand management measure listed in paragraph (1) of subdivision (f) that is not currently being implemented or scheduled for implementation. In the course of the evaluation, first consideration shall be given to water demand management measures, or combination of measures, that offer lower incremental costs than expanded or additional water supplies. This evaluation shall do all of the following:

(1) Take into account economic and noneconomic factors, including environmental, social, health, customer impact, and technological factors.

(2) Include a cost-benefit analysis, identifying total benefits and total costs.

(3) Include a description of funding available to implement any planned water supply project that would provide water at a higher unit cost.

(4) Include a description of the water supplier's legal authority to implement the measure and efforts to work with other relevant agencies to ensure the implementation of the measure and to share the cost of implementation.

(h) Include a description of all water supply projects and water supply programs that may be undertaken by the urban water supplier to meet the total projected water use as established pursuant to subdivision (a) of Section 10635. The urban water supplier shall include a detailed description of expected future projects and programs, other than the demand management programs identified pursuant to paragraph (1) of subdivision (f), that the urban water supplier may implement to increase the amount of the water supply available to the urban water supplier in average, single dry, and multiple dry water years. The description shall identify specific projects and include a description of the increase in water supply that is expected to be available from each project. The description shall include an estimate with regard to the implementation timeline for each project or program.

(i) Urban water suppliers that are members of the California Urban Water Conservation Council and submit annual reports to that council in accordance with the ''Memorandum of Understanding Regarding Urban Water Conservation in California,'' dated September 1991, may submit the annual reports identifying water demand management

measures currently being implemented, or scheduled for implementation, to satisfy the requirements of subdivisions (f) and (g).

SEC. 4. Section 10656 of the Water Code is amended to read:

10656. An urban water supplier that does not prepare, adopt, and submit its urban water management plan to the department in accordance with this part, is ineligible to receive funding pursuant to Division 24 (commencing with Section 78500) or Division 26 (commencing with Section 79000), or receive drought assistance from the state until the urban water management plan is submitted pursuant to this article.

SEC. 4.3. Section 10657 is added to the Water Code, to read:

10657. (a) The department shall take into consideration whether the urban water supplier has submitted an updated urban water management plan that is consistent with Section 10631, as amended by the act that adds this section, in determining whether the urban water supplier is eligible for funds made available pursuant to any program administered by the department.

(b) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 4.5. Section 10910 of the Water Code is amended to read:

10910. (a) Any city or county that determines that a project, as defined in Section 10912, is subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) under Section 21080 of the Public Resources Code shall comply with this part.

(b) The city or county, at the time that it determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required for any project subject to the California Environmental Quality Act pursuant to Section 21080.1 of the Public Resources Code, shall identify any water system that is, or may become as a result of supplying water to the project identified pursuant to this subdivision, a public water system, as defined in Section 10912, that may supply water for the project. If the city or county is not able to identify any public water system that may supply water for the project, the city or county shall prepare the water assessment required by this part after consulting with any entity serving domestic water supplies whose service area includes the project site, the local agency formation commission, and any public water system adjacent to the project site.

(c) (1) The city or county, at the time it makes the determination required under Section 21080.1 of the Public Resources Code, shall request each public water system identified pursuant to subdivision (b) to determine whether the projected water demand associated with a proposed project was included as part of the most recently adopted urban

water management plan adopted pursuant to Part 2.6 (commencing with Section 10610).

(2) If the projected water demand associated with the proposed project was accounted for in the most recently adopted urban water management plan, the public water system may incorporate the requested information from the urban water management plan in preparing the elements of the assessment required to comply with subdivisions (d), (e), (f), and (g).

(3) If the projected water demand associated with the proposed project was not accounted for in the most recently adopted urban water management plan, or the public water system has no urban water management plan, the water supply assessment for the project shall include a discussion with regard to whether the public water system's total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand associated with the proposed project, in addition to the public water system's existing and planned future uses, including agricultural and manufacturing uses.

(4) If the city or county is required to comply with this part pursuant to subdivision (b), the water supply assessment for the project shall include a discussion with regard to whether the total projected water supplies, determined to be available by the city or county for the project during normal, single dry, and multiple dry water years during a 20-year projection, will meet the projected water demand associated with the proposed project, in addition to existing and planned future uses, including agricultural and manufacturing uses.

(d) (1) The assessment required by this section shall include an identification of any existing water supply entitlements, water rights, or water service contracts relevant to the identified water supply for the proposed project, and a description of the quantities of water received in prior years by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), under the existing water supply entitlements, water rights, or water service contracts.

(2) An identification of existing water supply entitlements, water rights, or water service contracts held by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), shall be demonstrated by providing information related to all of the following:

(A) Written contracts or other proof of entitlement to an identified water supply.

(B) Copies of a capital outlay program for financing the delivery of a water supply that has been adopted by the public water system.

(C) Federal, state, and local permits for construction of necessary infrastructure associated with delivering the water supply.

(D) Any necessary regulatory approvals that are required in order to be able to convey or deliver the water supply.

(e) If no water has been received in prior years by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), under the existing water supply entitlements, water rights, or water service contracts, the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), shall also include in its water supply assessment pursuant to subdivision (c), an identification of the other public water systems or water service contractholders that receive a water supply or have existing water supply entitlements, water rights, or water service contracts, to the same source of water as the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), has identified as a source of water supply within its water supply assessments.

(f) If a water supply for a proposed project includes groundwater, the following additional information shall be included in the water supply assessment:

(1) A review of any information contained in the urban water management plan relevant to the identified water supply for the proposed project.

(2) A description of any groundwater basin or basins from which the proposed project will be supplied. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current bulletin of the department that characterizes the condition of the groundwater basin, and a detailed description by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), of the efforts being undertaken in the basin or basins to eliminate the long-term overdraft condition.

(3) A detailed description and analysis of the amount and location of groundwater pumped by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), for the past five years from any groundwater basin from which the proposed project will be supplied. The description and analysis shall be

based on information that is reasonably available, including, but not limited to, historic use records.

(4) A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), from any basin from which the proposed project will be supplied. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(5) An analysis of the sufficiency of the groundwater from the basin or basins from which the proposed project will be supplied to meet the projected water demand associated with the proposed project. A water supply assessment shall not be required to include the information required by this paragraph if the public water system determines, as part of the review required by paragraph (1), that the sufficiency of groundwater necessary to meet the initial and projected water demand associated with the project was addressed in the description and analysis required by paragraph (4) of subdivision (b) of Section 10631.

(g) (1) Subject to paragraph (2), the governing body of each public water system shall submit the assessment to the city or county not later than 90 days from the date on which the request was received. The governing body of each public water system, or the city or county if either is required to comply with this act pursuant to subdivision (b), shall approve the assessment prepared pursuant to this section at a regular or special meeting.

(2) Prior to the expiration of the 90-day period, if the public water system intends to request an extension of time to prepare and adopt the assessment, the public water system shall meet with the city or county to request an extension of time, which shall not exceed 30 days, to prepare and adopt the assessment.

(3) If the public water system fails to request an extension of time, or fails to submit the assessment notwithstanding the extension of time granted pursuant to paragraph (2), the city or county may seek a writ of mandamus to compel the governing body of the public water system to comply with the requirements of this part relating to the submission of the water supply assessment.

(h) Notwithstanding any other provision of this part, if a project has been the subject of a water supply assessment that complies with the requirements of this part, no additional water supply assessment shall be required for subsequent projects that were part of a larger project for which a water supply assessment was completed and that has complied with the requirements of this part and for which the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), has concluded that its water supplies are sufficient to

meet the projected water demand associated with the proposed project, in addition to the existing and planned future uses, including, but not limited to, agricultural and industrial uses, unless one or more of the following changes occurs:

(1) Changes in the project that result in a substantial increase in water demand for the project.

(2) Changes in the circumstances or conditions substantially affecting the ability of the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), to provide a sufficient supply of water for the project.

(3) Significant new information becomes available which was not known and could not have been known at the time when the assessment was prepared.

SEC. 5. Section 10911 of the Water Code is amended to read:

10911. (a) If, as a result of its assessment, the public water system concludes that its water supplies are, or will be, insufficient, the public water system shall provide to the city or county its plans for acquiring additional water supplies, setting forth the measures that are being undertaken to acquire and develop those water supplies. If the city or county, if either is required to comply with this part pursuant to subdivision (b), concludes as a result of its assessment, that water supplies are, or will be, insufficient, the city or county shall include in its water supply assessment its plans for acquiring additional water supplies, setting forth the measures that are being undertaken to acquire and develop those water supplies. Those plans may include, but are not limited to, information concerning all of the following:

(1) The estimated total costs, and the proposed method of financing the costs, associated with acquiring the additional water supplies.

(2) All federal, state, and local permits, approvals, or entitlements that are anticipated to be required in order to acquire and develop the additional water supplies.

(3) Based on the considerations set forth in paragraphs (1) and (2), the estimated timeframes within which the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), expects to be able to acquire additional water supplies.

(b) The city or county shall include the water supply assessment provided pursuant to Section 10910, and any information provided pursuant to subdivision (a), in any environmental document prepared for the project pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(c) The city or county may include in any environmental document an evaluation of any information included in that environmental document provided pursuant to subdivision (b). The city or county shall determine, based on the entire record, whether projected water supplies

will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If the city or county determines that water supplies will not be sufficient, the city or county shall include that determination in its findings for the project.

SEC. 6. Section 10912 of the Water Code is amended to read:

10912. For the purposes of this part, the following terms have the following meanings:

(a) ''Project'' means any of the following:

(1) A proposed residential development of more than 500 dwelling units.

(2) A proposed shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.

(3) A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.

(4) A proposed hotel or motel, or both, having more than 500 rooms.

(5) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.

(6) A mixed-use project that includes one or more of the projects specified in this subdivision.

(7) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

(b) If a public water system has fewer than 5,000 service connections, then ''project'' means any proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of the public water system's existing service connections, or a mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in the number of the public water system's existing service connections.

(c) ''Public water system'' means a system for the provision of piped water to the public for human consumption that has 3000 or more service connections. A public water system includes all of the following:

(1) Any collection, treatment, storage, and distribution facility under control of the operator of the system which is used primarily in connection with the system.

(2) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system.

(3) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

SEC. 7. Section 10913 of the Water Code is repealed.

SEC. 8. Section 10915 of the Water Code is amended to read:

10915. The County of San Diego is deemed to comply with this part if the Office of Planning and Research determines that all of the following conditions have been met:

(a) Proposition C, as approved by the voters of the County of San Diego in November 1988, requires the development of a regional growth management plan and directs the establishment of a regional planning and growth management review board.

(b) The County of San Diego and the cities in the county, by agreement, designate the San Diego Association of Governments as that review board.

(c) A regional growth management strategy that provides for a comprehensive regional strategy and a coordinated economic development and growth management program has been developed pursuant to Proposition C.

(d) The regional growth management strategy includes a water element to coordinate planning for water that is consistent with the requirements of this part.

(e) The San Diego County Water Authority, by agreement with the San Diego Association of Governments in its capacity as the review board, uses the association's most recent regional growth forecasts for planning purposes and to implement the water element of the strategy.

(f) The procedures established by the review board for the development and approval of the regional growth management strategy, including the water element and any certification process established to ensure that a project is consistent with that element, comply with the requirements of this part.

(g) The environmental documents for a project located in the County of San Diego include information that accomplishes the same purposes as a water supply assessment that is prepared pursuant to Section 10910.

SEC. 9. Section 3.5 of this bill incorporates amendments to Section 10631 of the Water Code proposed by both this bill and AB 901. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 10631 of the Water Code, and (3) this bill is enacted after AB 901, in which case Section 3 of this bill shall not become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service

mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 644

An act to amend Sections 10610.2 and 10631 of, and to add Section 10634 to, the Water Code, relating to water.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 10610.2 of the Water Code is amended to read:

10610.2. The Legislature finds and declares all of the following:

(a) The waters of the state are a limited and renewable resource subject to ever-increasing demands.

(b) The conservation and efficient use of urban water supplies are of statewide concern; however, the planning for that use and the implementation of those plans can best be accomplished at the local level.

(c) A long-term, reliable supply of water is essential to protect the productivity of California's businesses and economic climate.

(d) As part of its long-range planning activities, every urban water supplier should make every effort to ensure the appropriate level of reliability in its water service sufficient to meet the needs of its various categories of customers during normal, dry, and multiple dry water years.

(e) Public health issues have been raised over a number of contaminants that have been identified in certain local and imported water supplies.

(f) Implementing effective water management strategies, including groundwater storage projects and recycled water projects, may require specific water quality and salinity targets for meeting groundwater basins water quality objectives and promoting beneficial use of recycled water.

(g) Water quality regulations are becoming an increasingly important factor in water agencies' selection of raw water sources, treatment alternatives, and modifications to existing treatment facilities.

(h) Changes in drinking water quality standards may also impact the usefulness of water supplies and may ultimately impact supply reliability.

(i) The quality of source supplies can have a significant impact on water management strategies and supply reliability.

(2) This part is intended to provide assistance to water agencies in carrying out their long-term resource planning responsibilities to ensure adequate water supplies to meet existing and future demands for water.

SEC. 2. Section 10631 of the Water Code is amended to read:

10631. A plan shall be adopted in accordance with this chapter and shall do all of the following:

(a) Describe the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier's water management planning. The projected population estimates shall be based upon data from the state, regional, or local service agency population projections within the service area of the urban water supplier and shall be in five-year increments to 20 years or as far as data is available.

(b) Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments described in subdivision (a).

(c) Describe the reliability of the water supply and vulnerability to seasonal or climatic shortage, to the extent practicable, and provide data for each of the following:

(1) An average water year.

(2) A single dry water year.

(3) Multiple dry water years.

For any water source that may not be available at a consistent level of use, given specific legal, environmental, water quality, or climatic factors, describe plans to supplement or replace that source with alternative sources or water demand management measures, to the extent practicable.

(d) Describe the opportunities for exchanges or transfers of water on a short-term or long-term basis.

(e) (1) Quantify, to the extent records are available, past and current water use, over the same five-year increments described in subdivision (a), and projected water use, identifying the uses among water use sectors including, but not necessarily limited to, all of the following uses:

(A) Single-family residential.

(B) Multifamily.

(C) Commercial.

(D) Industrial.

(E) Institutional and governmental.

(F) Landscape.

(G) Sales to other agencies.

(H) Saline water intrusion barriers, groundwater recharge, or conjunctive use, or any combination thereof.

(I) Agricultural.

(2) The water use projections shall be in the same five-year increments described in subdivision (a).

(f) Provide a description of the supplier's water demand management measures. This description shall include all of the following:

(1) A description of each water demand management measure that is currently being implemented, or scheduled for implementation, including the steps necessary to implement any proposed measures, including, but not limited to, all of the following:

(A) Water survey programs for single-family residential and multifamily residential customers.

(B) Residential plumbing retrofit.

(C) System water audits, leak detection, and repair.

(D) Metering with commodity rates for all new connections and retrofit of existing connections.

(E) Large landscape conservation programs and incentives.

(F) High-efficiency washing machine rebate programs.

(G) Public information programs.

(H) School education programs.

(I) Conservation programs for commercial, industrial, and institutional accounts.

(J) Wholesale agency programs.

(K) Conservation pricing.

(L) Water conservation coordinator.

(M) Water waste prohibition.

(N) Residential ultra-low-flush toilet replacement programs.

(2) A schedule of implementation for all water demand management measures proposed or described in the plan.

(3) A description of the methods, if any, that the supplier will use to evaluate the effectiveness of water demand management measures implemented or described under the plan.

(4) An estimate, if available, of existing conservation savings on water use within the supplier's service area, and the effect of the savings on the supplier's ability to further reduce demand.

(g) An evaluation of each water demand management measure listed in paragraph (1) of subdivision (f) that is not currently being implemented or scheduled for implementation. In the course of the evaluation, first consideration shall be given to water demand management measures, or combination of measures, that offer lower incremental costs than expanded or additional water supplies. This evaluation shall do all of the following:

(1) Take into account economic and noneconomic factors, including environmental, social, health, customer impact, and technological factors.

(2) Include a cost-benefit analysis, identifying total benefits and total costs.

(3) Include a description of funding available to implement any planned water supply project that would provide water at a higher unit cost.

(4) Include a description of the water supplier's legal authority to implement the measure and efforts to work with other relevant agencies to ensure the implementation of the measure and to share the cost of implementation.

(h) Urban water suppliers that are members of the California Urban Water Conservation Council and submit annual reports to that council in accordance with the ''Memorandum of Understanding Regarding Urban Water Conservation in California,'' dated September 1991, may submit the annual reports identifying water demand management measures currently being implemented, or scheduled for implementation, to satisfy the requirements of subdivisions (f) and (g).

SEC. 2.5. Section 10631 of the Water Code is amended to read:

10631. A plan shall be adopted in accordance with this chapter and shall do all of the following:

(a) Describe the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier's water management planning. The projected population estimates shall be based upon data from the state, regional, or local service agency population projections within the service area of the urban water supplier and shall be in five-year increments to 20 years or as far as data is available.

(b) Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments described in subdivision (a). If groundwater is identified as an existing or planned source of water available to the supplier, all of the following information shall be included in the plan:

(1) A copy of any groundwater management plan adopted by the urban water supplier, including plans adopted pursuant to Part 2.75 (commencing with Section 10750), or any other specific authorization for groundwater management.

(2) A description of any groundwater basin or basins from which the urban water supplier pumps groundwater. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the urban water supplier has the legal right to pump under the order or decree. For basins that have

not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current official departmental bulletin that characterizes the condition of the groundwater basin, and a detailed description of the efforts being undertaken by the urban water supplier to eliminate the long-term overdraft condition.

(3) A detailed description and analysis of the location, amount, and sufficiency of groundwater pumped by the urban water supplier for the past five years. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(4) A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the urban water supplier. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(c) Describe the reliability of the water supply and vulnerability to seasonal or climatic shortage, to the extent practicable, and provide data for each of the following:

(1) An average water year.

(2) A single dry water year.

(3) Multiple dry water years.

For any water source that may not be available at a consistent level of use, given specific legal, environmental, water quality, or climatic factors, describe plans to supplement or replace that source with alternative sources or water demand management measures, to the extent practicable.

(d) Describe the opportunities for exchanges or transfers of water on a short-term or long-term basis.

(e) (1) Quantify, to the extent records are available, past and current water use, over the same five-year increments described in subdivision (a), and projected water use, identifying the uses among water use sectors including, but not necessarily limited to, all of the following uses:

(A) Single-family residential.

(B) Multifamily.

(C) Commercial.

(D) Industrial.

(E) Institutional and governmental.

(F) Landscape.

(G) Sales to other agencies.

(H) Saline water intrusion barriers, groundwater recharge, or conjunctive use, or any combination thereof.

(I) Agricultural.

(2) The water use projections shall be in the same five-year increments described in subdivision (a).

(f) Provide a description of the supplier's water demand management measures. This description shall include all of the following:

(1) A description of each water demand management measure that is currently being implemented, or scheduled for implementation, including the steps necessary to implement any proposed measures, including, but not limited to, all of the following:

(A) Water survey programs for single-family residential and multifamily residential customers.

(B) Residential plumbing retrofit.

(C) System water audits, leak detection, and repair.

(D) Metering with commodity rates for all new connections and retrofit of existing connections.

(E) Large landscape conservation programs and incentives.

(F) High-efficiency washing machine rebate programs.

(G) Public information programs.

(H) School education programs.

(I) Conservation programs for commercial, industrial, and institutional accounts.

(J) Wholesale agency programs.

(K) Conservation pricing.

(L) Water conservation coordinator.

(M) Water waste prohibition.

(N) Residential ultra-low-flush toilet replacement programs.

(2) A schedule of implementation for all water demand management measures proposed or described in the plan.

(3) A description of the methods, if any, that the supplier will use to evaluate the effectiveness of water demand management measures implemented or described under the plan.

(4) An estimate, if available, of existing conservation savings on water use within the supplier's service area, and the effect of the savings on the supplier's ability to further reduce demand.

(g) An evaluation of each water demand management measure listed in paragraph (1) of subdivision (f) that is not currently being implemented or scheduled for implementation. In the course of the evaluation, first consideration shall be given to water demand management measures, or combination of measures, that offer lower incremental costs than expanded or additional water supplies. This evaluation shall do all of the following:

(1) Take into account economic and noneconomic factors, including environmental, social, health, customer impact, and technological factors.

(2) Include a cost-benefit analysis, identifying total benefits and total costs.

(3) Include a description of funding available to implement any planned water supply project that would provide water at a higher unit cost.

(4) Include a description of the water supplier's legal authority to implement the measure and efforts to work with other relevant agencies to ensure the implementation of the measure and to share the cost of implementation.

(h) Include a description of all water supply projects and water supply programs that may be undertaken by the urban water supplier to meet the total projected water use as established pursuant to subdivision (a) of Section 10635. The urban water supplier shall include a detailed description of expected future projects and programs, other than the demand management programs identified pursuant to paragraph (1) of subdivision (f), that the urban water supplier may implement to increase the amount of the water supply available to the urban water supplier in average, single-dry, and multiple-dry water years. The description shall identify specific projects and include a description of the increase in water supply that is expected to be available from each project. The description shall include an estimate with regard to the implementation timeline for each project or program.

(i) Urban water suppliers that are members of the California Urban Water Conservation Council and submit annual reports to that council in accordance with the ''Memorandum of Understanding Regarding Urban Water Conservation in California,'' dated September 1991, may submit the annual reports identifying water demand management measures currently being implemented, or scheduled for implementation, to satisfy the requirements of subdivisions (f) and (g).

SEC. 3. Section 10634 is added to the Water Code, to read:

10634. The plan shall include information, to the extent practicable, relating to the quality of existing sources of water available to the supplier over the same five-year increments as described in subdivision (a) of Section 10631, and the manner in which water quality affects water management strategies and supply reliability.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 10631 of the Water 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, 2002, (2) each bill amends Section 10631 of the Water Code, and (3) this bill is enacted after SB 610, in which case Section 2 of this bill shall not become operative.

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CHAPTER 645

An act to amend Section 1011.7 of the Military and Veterans Code, relating to veterans.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 9, 2001.]

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

SECTION 1. Section 1011.7 of the Military and Veterans Code is amended to read:

1011.7. (a) There is hereby created a Governor's Commission on Veterans Homes to advise the Governor and the Legislature on the establishment of veterans homes in California.

(b) The commission shall consist of 12 members as follows:

(1) A member of the Veterans of Foreign Wars, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the Veterans of Foreign Wars.

(2) A member of the American Legion, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the American Legion.

(3) A member of the Disabled American Veterans, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the Disabled American Veterans.

(4) A member of the AmVets, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the AmVets.

(5) Three veterans, as defined by Section 980, appointed by the Governor.

(6) Two members appointed by the Speaker of the Assembly, one of whom shall be a veteran, as defined by Section 980, and one of whom shall serve as an ex officio, nonvoting member.

(7) Two members appointed by the Senate Committee on Rules, one of whom shall be a veteran, as defined by Section 980, and one of whom shall serve as an ex officio, nonvoting member.

(8) The Secretary of Veterans Affairs or his or her designee.

(c) (1) In making appointments pursuant to paragraphs (1) to (4), inclusive, of subdivision (b), the Governor shall consult with the leadership of the veterans organizations specified in those paragraphs.

(2) Notwithstanding any other provision of law, gubernatorial appointments made pursuant to subdivision (b) shall not be subject to the approval of the Senate.

(d) The Governor shall select one of the members to serve as chairperson.

(e) The commission shall hold a minimum of four public meetings at times and places as it shall determine.

(f) (1) Each member shall receive, for each day's attendance at each meeting of the commission, a per diem of fifty dollars ($50) and shall receive the same per diem for each day spent on official duties assigned by the commission.

(2) Each member shall be reimbursed for his or her necessary traveling and other expenses incurred in the performance of his or her official duties.

State agencies, including those identified in subdivision (j), may pay a portion of the commission's expenses.

(g) (1) The commission shall establish findings and make recommendations to the Governor and the Legislature on the establishment of veterans homes in California. The findings and recommendations may include, but need not be limited to, the following matters:

(A) Possible sites for one or more state veterans homes. This recommendation shall give consideration to the availability of federal surplus property and any property available for no cost, or at less than market value, from public or private sources, and to a competitive site-selection process that would compare the relative merits of all available sites.

(B) Selection of a site specifically for the treatment of veterans who suffer from Alzheimer's disease or other diseases causing dementia. Preference should be given to a site with access to an existing medical teaching or research facility.

(C) The scope and level of health care, residential care, and recreational facilities, and other services and amenities to be provided at each home.

(D) The number of sites to be established and the resident population to be served at each site, including a description of the type, size, and projected population of each of the residential components of the home, including, but not limited to, skilled nursing care beds, intermediate care beds, domiciliary care, independent living facilities, and day care facilities.

(E) Estimates of design and planning costs, land acquisition costs, capital construction costs, and annual operating costs of each home that would be associated with various modes of construction.

(F) Financing options for the development and construction of a home on one or more sites that shall include, but not be limited to, financial assistance available through the federal Department of Veterans Affairs State Home Grants Program.

(G) The management of each home by state or private administration.

(2) For the purposes of paragraph (1), the commission shall hear testimony from interested citizens concerning the needs of veterans in California.

(h) The commission shall report to the Governor and the Legislature on or before October 1, 2001, concerning its findings and recommendations, as specified in subdivision (g), for the development and construction activities associated with veterans homes in California.

(i) (1) Any new veterans homes sites recommended by the Governor's Commission on Veterans Homes shall be in addition to, and any new homes shall be built after, those listed in Section 1011.

(2) Priority for new veterans home sites shall be in areas that have been underserved, specifically in the San Joaquin Valley and the Los Angeles Basin.

(j) State agencies, including, but not limited to, the Governor's Office of Planning and Research, the Department of Veterans Affairs, the office of the Treasurer, and the Project Management Branch within the Real Estate Services Division of the Department of General Services, shall provide staff assistance to the commission upon its request.

(k) The commission may solicit and accept private donations, through the secretary, from any person, association, or entity interested in veterans benefits.

(*l*) 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. 1.5. Section 1011.7 of the Military and Veterans Code is amended to read:

1011.7. (a) There is hereby created a Governor's Commission on Veterans Homes to advise the Governor and the Legislature on the establishment of veterans homes in California.

(b) The commission shall consist of 12 members as follows:

(1) A member of the Veterans of Foreign Wars, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the Veterans of Foreign Wars.

(2) A member of the American Legion, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the American Legion.

(3) A member of the Disabled American Veterans, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the Disabled American Veterans.

(4) A member of the AmVets, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the AmVets.

(5) Three veterans, as defined by Section 980, appointed by the Governor.

(6) Two members appointed by the Speaker of the Assembly, one of whom shall be a veteran, as defined by Section 980, and one of whom shall serve as an ex officio, nonvoting member.

(7) Two members appointed by the Senate Committee on Rules, one of whom shall be a veteran, as defined by Section 980, and one of whom shall serve as an ex officio, nonvoting member.

(8) The Secretary of Veterans Affairs or his or her designee.

(c) (1) In making appointments pursuant to paragraphs (1) to (4), inclusive, of subdivision (b), the Governor shall consult with the leadership of the veterans organizations specified in those paragraphs.

(2) Notwithstanding any other provision of law, gubernatorial appointments made pursuant to subdivision (b) shall not be subject to the approval of the Senate.

(d) The Governor shall select one of the members to serve as chairperson.

(e) The commission shall hold a minimum of four public meetings at times and places as it shall determine.

(f) (1) Each member shall receive, for each day's attendance at each meeting of the commission, a per diem of fifty dollars ($50) and shall receive the same per diem for each day spent on official duties assigned by the commission.

(2) Each member shall be reimbursed for his or her necessary traveling and other expenses incurred in the performance of his or her official duties.

State agencies, including those identified in subdivision (j), may pay a portion of the commission's expenses.

(g) (1) The commission shall establish findings and make recommendations to the Governor and the Legislature on the establishment of veterans homes in California. The findings and recommendations may include, but need not be limited to, the following matters:

(A) Possible sites for one or more state veterans homes. This recommendation shall give consideration to the availability of federal surplus property and any property available for no cost, or at less than market value, from public or private sources, and to a competitive site-selection process that would compare the relative merits of all available sites including, but not limited to, Shasta County, the Central Valley, and Los Angeles County.

(B) Selection of a site specifically for the treatment of veterans who suffer from Alzheimer's disease or other diseases causing dementia. Preference should be given to a site with access to an existing medical teaching or research facility.

(C) The scope and level of health care, residential care, and recreational facilities, and other services and amenities to be provided at each home.

(D) The number of sites to be established and the resident population to be served at each site, including a description of the type, size, and projected population of each of the residential components of the home, including, but not limited to, skilled nursing care beds, intermediate care beds, domiciliary care, independent living facilities, and day care facilities.

(E) Estimates of design and planning costs, land acquisition costs, capital construction costs, and annual operating costs of each home that would be associated with various modes of construction.

(F) Financing options for the development and construction of a home on one or more sites that shall include, but not be limited to, financial assistance available through the federal Department of Veterans Affairs State Home Grants Program.

(G) The management of each home by state or private administration.

(2) For the purposes of paragraph (1), the commission shall hear testimony from interested citizens concerning the needs of veterans in California.

(h) The commission shall report to the Governor and the Legislature on or before October 1, 2001, concerning its findings and recommendations, as specified in subdivision (g), for the development and construction activities associated with veterans homes in California.

(i) (1) Any new veterans homes sites recommended by the Governor's Commission on Veterans Homes shall be in addition to, and any new homes shall be built after, those listed in Section 1011.

(2) Priority for new veterans home sites shall be in areas that have been underserved, specifically in the San Joaquin Valley and the Los Angeles Basin.

(j) State agencies, including, but not limited to, the Governor's Office of Planning and Research, the Department of Veterans Affairs, the office of the Treasurer, and the Project Management Branch within the Real Estate Services Division of the Department of General Services, shall provide staff assistance to the commission upon its request.

(k) The commission may solicit and accept private donations, through the secretary, from any person, association, or entity interested in veterans benefits.

(*l*) 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. 2. Section 1.5 of this bill incorporates amendments to Section 1011.7 of the Military and Veterans Code proposed by both this bill and SB 4. It shall only become operative if (1) both bills are enacted and

become effective on or before January 1, 2002, (2) each bill amends Section 1011.7 of the Military and Veterans Code, and (3) this bill is enacted after SB 4, in which case Section 1 of this bill shall not become operative.

CHAPTER 646

An act to amend Section 35294.2 of the Education Code, relating to school safety.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 35294.2 of the Education Code is amended to read:

35294.2. (a) The comprehensive school safety plan shall include, but not necessarily be limited to, the following:

(1) Assessing the current status of school crime committed on school campuses and at school-related functions.

(2) Identifying appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety, which shall include the development of all of the following:

(A) Child abuse reporting procedures consistent with Article 2.5 (commencing with Section 11164) of Title 1 of Part 4 of the Penal Code.

(B) Disaster procedures, routine and emergency.

(C) Policies pursuant to subdivision (d) of Section 48915 for pupils who committed an act listed in subdivision (c) of Section 48915 and other school-designated serious acts which would lead to suspension, expulsion, or mandatory expulsion recommendations pursuant to Article 1 (commencing with Section 48900) of Chapter 6 of Part 27.

(D) Procedures to notify teachers of dangerous pupils pursuant to Section 49079.

(E) A sexual harassment policy, pursuant to subdivision (b) of Section 231.5.

(F) The provisions of any schoolwide dress code, pursuant to Section 35183, that prohibits pupils from wearing ''gang-related apparel,'' if the school has adopted such a dress code. For those purposes, the comprehensive school safety plan shall define ''gang-related apparel.'' The definition shall be limited to apparel that, if worn or displayed on a school campus, reasonably could be determined to threaten the health

and safety of the school environment. Any schoolwide dress code established pursuant to this section and Section 35183 shall be enforced on the school campus and at any school-sponsored activity by the principal of the school or the person designated by the principal. For the purposes of this paragraph, ''gang-related apparel'' shall not be considered a protected form of speech pursuant to Section 48950.

(G) Procedures for safe ingress and egress of pupils, parents, and school employees to and from school.

(H) A safe and orderly environment conducive to learning at the school.

(I) The rules and procedures on school discipline adopted pursuant to Sections 35291 and 35291.5.

(b) It is the intent of the Legislature that schools develop comprehensive school safety plans using existing resources, including the materials and services of the School Safety Partnership, pursuant to Chapter 2.5 (commencing with Section 32260) of Part 19. It is also the intent of the Legislature that schools use the handbook developed and distributed by the School/Law Enforcement Partnership Program entitled ''Safe Schools: A Planning Guide for Action'' in conjunction with developing their plan for school safety.

(c) Grants to assist schools in implementing their comprehensive school safety plan shall be made available through the School Safety Partnership as authorized by Section 32262.

(d) Each schoolsite council or school safety planning committee in developing and updating a comprehensive school safety plan shall, where practical, consult, cooperate, and coordinate with other schoolsite councils or school safety planning committees.

(e) The comprehensive school safety plan shall be evaluated and amended, as needed, by the school safety planning committee no less than once a year to ensure that the comprehensive school safety plan is properly implemented. An updated file of all safety-related plans and materials shall be readily available for inspection by the public.

(f) The comprehensive school safety plan, as written and updated by the schoolsite council or school safety planning committee, shall be submitted for approval under subdivision (a) of Section 35294.8.

(g) The State Department of Education shall develop model policies on the prevention of bullying and on conflict resolution and make the model policies available to school districts. A school district may adopt one or both of these policies for incorporation into its school safety plan.

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CHAPTER 647

An act to amend Section 17072.12 of the Education Code, relating to school facilities.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 17072.12 of the Education Code is amended to read:

17072.12. (a) In addition to the amount provided in Section 17072.10, the board may provide funding for assistance in site development and acquisition if all of the following are met:

(1) The amount of the site acquisition and development assistance does not exceed 50 percent of the cost of site development to the school district, plus the lesser of the following:

(A) 50 percent of the site cost to the school district.

(B) 50 percent of the appraised value of the site within six months of the time the complete application is submitted.

(2) The school district certifies that there is no alternative available site, or that the district plans to sell an available site in order to use the proceeds of the sale for the purchase of the new site.

(b) Notwithstanding subdivision (a), the board may provide funding for assistance in site development and acquisition to a school district that uses land previously acquired by the school district in an amount equal to 50 percent of the cost of site development to the school district, plus 50 percent of the site's appraised value at the time the application for site acquisition and development is submitted, provided all of the following are met:

(1) The site was acquired no less than five years prior to the date the application is submitted.

(2) The site had been productively used by the school district as other than a schoolsite for the five years immediately preceding the date the application is submitted.

(3) The board determines that the nonschool function currently taking place on the site must be discontinued or relocated in order to utilize the site as a schoolsite.

(c) A school district that receives assistance pursuant to subdivision (b) shall, within one year after the completion of the project, certify in writing to the board that the nonschool function was in fact relocated as set forth in paragraph (4) of subdivision (b).

(d) Pursuant to subdivision (b), an applicant school district shall include in its application to the board a cost-benefit analysis performed

by the school district demonstrating how utilizing existing nonschoolsite district property pursuant to this section would be a more effective method of solving the school district's pupil housing problems than any other method of funding under this chapter. The board shall review and approve the analysis if the board agrees with the findings and shall consider the analysis and findings in approving the project pursuant to this section.

CHAPTER 648

An act to add Part 6.4 (commencing with Section 12699.50) to Division 2 of the Insurance Code, relating to health care coverage, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Part 6.4 (commencing with Section 12699.50) is added to Division 2 of the Insurance Code, to read:

PART 6.4. CHILDREN'S HEALTH INITIATIVE MATCHING FUND

12699.50. This part shall be known and may be cited as the Children's Health Initiative Matching Fund.

12699.51. For the purposes of this part, the following definitions shall apply:

(a) ''Administrative costs'' means those expenses that are not incurred for the direct provision of health benefits.

(b) ''Applicant'' means a county agency, a local initiative, or a county organized health system.

(c) ''Board'' means the Managed Risk Medical Insurance Board.

(d) ''Child'' means a person under 19 years of age.

(e) ''Comprehensive health insurance coverage'' means the coverage described in Section 12693.60.

(f) ''County organized health system'' means a health system implemented pursuant to Article 2.8 (commencing with Section 14087.5) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code and Article 1 (commencing with Section 101675) of Chapter 3 of Part 4 of Division 101 of the Health and Safety Code.

(g) ''Fund'' means the Children's Health Initiative Matching Fund.

(h) ''Local initiative'' has the same meaning as set forth in Section 12693.08.

12699.52. (a) The Children's Health Initiative Matching Fund is hereby established within the State Treasury. The fund shall accept intergovernmental transfers as the nonfederal matching fund requirement for federal financial participation through the State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code).

(b) The board shall administer this fund and the provisions of this part in collaboration with the State Department of Health Services for the express purpose of allowing local funds to be used to facilitate increasing the state's ability to utilize federal funds available to California. These federal funds shall be used prior to the expiration of their authority for one-time programs designed to improve and expand access for uninsured persons.

12699.53. (a) An applicant that will provide an intergovernmental transfer may submit a proposal to the board for funding for the purpose of providing comprehensive health insurance coverage to any child who meets citizenship and immigration status requirements that are applicable to persons participating in the program established by Title XXI of the Social Security Act, except as specified in Section 12693.76, whose family income is at or below 300 percent of the federal poverty level in specific geographic areas, as published quarterly in the Federal Register by the Department of Health and Human Services, and who does not qualify for either the Healthy Families Program (Part 6.2 (commencing with Section 12693) or the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code). The proposal shall guarantee at least one year of intergovernmental transfer funding by the applicant at a level that ensures compliance with the requirements of an approved federal waiver and shall, on an annual basis, either commit to fully funding the necessary intergovernmental amount to meet the conditions of the waiver or withdraw from the program. The board may identify specific geographical areas that, in comparison to the national level, have a higher cost of living or housing or a greater need for additional health services, using data obtained from the most recent federal census, the federal Consumer Expenditure Survey, or from other sources. The proposal may include an administrative mechanism for outreach and eligibility.

(b) The applicant may include in its proposal reimbursement of medical, dental, vision, or mental health services delivered to children who are eligible under the State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code), if these services are part of an overall

program with the measurable goal of enrolling served children in the Healthy Families Program.

(c) If a child is determined to be eligible for benefits for the treatment of an eligible medical condition under the California Children's Services Program pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, the applicant shall not be responsible for the provision of, or payment for, those authorized services for that child. The proposal from an applicant shall contain provisions to ensure that a child whom the applicant reasonably believes would be eligible for services under the California Children's Services Program is referred to that program. The California Children's Services Program shall provide case management and authorization of services if the child is found to be eligible for the California Children's Services Program. Diagnosis and treatment services that are authorized by the California Children's Services Program shall be performed by paneled providers for that program and approved special care centers of that program and approved by the California Children's Services Program. All other services provided under the proposal from the applicant shall be made available pursuant to this part to a child who is eligible for services under the California Children's Services Program.

12699.54. (a) The board and the State Department of Health Services, in consultation with participating entities, including the Healthy Families Advisory Committee, and other appropriate parties, shall establish the criteria for evaluating an applicant's proposal, which shall include, but not be limited to, the following:

(1) The extent to which the program described in the proposal provides comprehensive coverage including health, dental, and vision benefits.

(2) Whether the proposal includes a promotional component to notify the public of its provision of health insurance to eligible children.

(3) The simplicity of the proposal's procedures for applying to participate and for determining eligibility for participation in its program.

(4) The extent to which the proposal provides for coordination and conformity with benefits provided through Medi-Cal and the Healthy Families Program.

(5) The extent to which the proposal provides for coordination and conformity with existing Healthy Families Program administrative entities in order to prevent administrative duplication and fragmentation.

(6) The ability of the health care providers designated in the proposal to serve the eligible population and the extent to which the proposal

includes traditional and safety net providers, as defined in regulations adopted pursuant to the Healthy Families Program.

(7) The extent to which the proposal intends to work with the school districts and county offices of education.

(8) The total amount of funds available to the applicant to implement the program described in its proposal, and the percentage of this amount proposed for administrative costs as well as the cost to the state to administer the proposal.

(9) The extent to which the proposal seeks to minimize the substitution of private employer health insurance coverage for health benefits provided through a governmental source.

(10) The extent to which local resources may be available after the depletion of federal funds to continue any current program expansions for persons covered under local health care financing programs or for expanded benefits.

(b) The board, in collaboration with the State Department of Health Services, shall adopt regulations, setting forth the criteria it uses to evaluate an applicant's proposal.

12699.55. The board, in collaboration with the State Department of Health Services, shall review each funding proposal submitted by an applicant in accordance with the criteria described in Section 12699.54 and based on that criteria, approve or reject the proposal.

12699.56. (a) Upon its approval of a proposal, the board, in collaboration with the State Department of Health Services, may provide the applicant reimbursement in an amount equal to the amount that the applicant will contribute to implement the program described in its proposal, plus the appropriate and allowable amount of federal funds under the State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code). Reimbursement provided from the Children's Health Initiative Matching Fund shall consist of intergovernmental transfers from applicants, as defined in subdivision (b) of Section 12699.51, and the appropriate and allowable federal State Children's Health Insurance Program funds. Not more than 10 percent of the Childrens' Health Initiative Matching Fund shall be expended for administrative costs, including the costs to the state to administer the proposal. The board, in collaboration with the State Department of Health Services, may audit the expenses incurred by the applicant in implementing its program to ensure that the expenditures comply with the provisions of this part. No reimbursement may be made to an applicant that fails to meet its financial participation obligation under this part. Reasonable start up costs and ongoing administrative costs for the program shall be reimbursed by those entities applying for funding.

(b) Each applicant that is provided funds under this part shall submit to the board a plan to limit initial and continuing enrollment in its program in the event the amount of moneys for its program is insufficient to maintain health insurance coverage for those participating in the program.

12699.57. Each health care service plan and specialized health care service plan that contracts to provide health care benefits under this part shall be licensed by the Department of Managed Health Care or be a county organized health system.

12699.58. The board, in collaboration with the State Department of Health Services, shall administer the provisions of this part and may do all of the following:

(a) Administer the expenditure of moneys from the fund.

(b) Adopt regulations, including the adoption of emergency regulations, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

12699.59. All expenses incurred by the board and the State Department of Health Services in administering the provisions of this part shall be paid from the fund.

12699.60. Nothing in this part creates a right or an entitlement to the provision of health insurance coverage or health care benefits. No costs shall accrue to the state for the provision of these services.

12699.61. The Governor, in collaboration with the Managed Risk Medical Insurance Board and the State Department of Health Services, shall apply for a waiver pursuant to the federal State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code) in coordination with the Managed Risk Medical Insurance Board and the State Department of Health Services to allow a county agency, local initiative, or county organized health system to apply for matching funds through the federal State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code) using local funds for the state matching funds.

12699.62. (a) The provisions of this part shall be implemented only if all of the following conditions are met:

(1) Federal funds are appropriated for this purpose.

(2) Federal participation is approved.

(3) The Managed Risk Medical Insurance Board determines that federal State Children's Health Insurance Program funds will remain available in the relevant fiscal year after providing funds for the following groups:

(A) All current enrollees and eligible children and parents that are likely to enroll in the Healthy Families Program in that fiscal year, as determined by a Department of Finance estimate.

(B) Rollover funds are determined to be available from the State Children's Health Insurance Program. For this purpose, ''rollover funds'' are those funds that are available on a one-time only basis through the federal State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code) and are not committed for use by those groups described in subparagraph (A).

(b) The State Department of Health Services and the Managed Risk Medical Insurance Board may accept funding necessary for the preparation of the federal waiver application described in Section 12699.61 from a not-for-profit group or foundation.

(c) The submission and approval of federal waivers for State Children's Health Insurance Program funds that use state General Fund moneys for the addition of children or parents shall take precedence over the submittal of the waiver required by Section 12699.61.

12699.63. The state shall be held harmless for any federal disallowance resulting from this part. An applicant receiving supplemental reimbursement pursuant to this part shall be liable for any reduced federal financial participation resulting from the implementation of this part with respect to that applicant. The state may recoup any federal disallowance from the applicant.

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 expand the availability of insurance coverage for children in low-income households and to make available funding for that purpose as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 649

An act to add Sections 14176.5 and 14176.6 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

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

(a) There is a demonstrated critical need in the state for traditional safety net providers to continue to provide accessible health care services to low-income, indigent, and medically underserved communities.

(b) Too many hospitals in these communities have already suffered closure.

(c) The loss of yet another provider is not in the best interest of the state.

(d) It is necessary, and in the best interest of the public, to give to the State Department of Health Services more authority to work with these hospitals and clinics regarding debts resulting from Medi-Cal overpayments in an attempt to prevent the further loss of vital services.

SEC. 2. Section 14176.5 is added to the Welfare and Institutions Code, to read:

14176.5. Whenever it has been determined, pursuant to an audit conducted by the department, that an overpayment for Medi-Cal services has been made to a hospital for services rendered from January 1, 1992, to December 31, 1997, the department may forgive all or part of the debt arising from the overpayment, and interest, if the hospital is all of the following:

(a) A disproportionate share hospital, as defined in Section 14105.98.

(b) Located in Kern County or Monterey County.

(c) A nonprofit hospital, as defined in Section 127050 of the Health and Safety Code, or not affiliated with a hospital system.

CHAPTER 650

An act to amend Sections 17052.17, 17052.18, 23617, and 23617.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 17052.17 of the Revenue and Taxation Code is amended to read:

17052.17. (a) For each taxable year beginning on or after January 1, 1988, and before January 1, 2007, there shall be allowed as a credit

against the ''net tax'' (as defined by Section 17039) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of any of the following:

(A) The cost paid or incurred by the taxpayer on or after September 23, 1988, for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayer's employees.

(B) For each taxable year beginning on or after January 1, 1993, the cost paid or incurred by the taxpayer for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of employees of tenants leasing commercial or office space in a building owned by the taxpayer.

(C) The cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to California child care information and referral services, including, but not limited to, those that identify local child care services, offer information describing these resources to the taxpayer's employees, and make referrals of the taxpayer's employees to child care services where there are vacancies.

In the case of a child care facility established by two or more taxpayers, the credit shall be allowed to each taxpayer if the facility is to be used primarily by the children of the employees of each of the taxpayers or the children of the employees of the tenants of each of the taxpayers.

(2) The amount of the credit allowed by this section shall not exceed fifty thousand dollars ($50,000) for any taxable year.

(c) For purposes of this section, ''startup expenses'' include, but are not limited to, feasibility studies, site preparation, and construction, renovation or acquisition of facilities for purposes of establishing or expanding onsite or nearsite centers by one or more employers or one or more building owners leasing space to employers.

(d) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to his, her, or its respective share of the costs paid or incurred.

(e) (1) In the case where the credit allowed and limited under subdivision (b) exceeds the ''net tax,'' the excess may be carried over to reduce the ''net tax'' in the following year, and succeeding years if necessary, until the credit has been exhausted. However, the excess from any one year shall not exceed fifty thousand dollars ($50,000).

(2) If the credit carryovers from preceding taxable years allowed under paragraph (1) plus the credit allowed for the taxable year under subdivision (b) would exceed an aggregate total of fifty thousand dollars ($50,000), then the credit allowed to reduce the ''net tax'' under this section for the taxable year shall be limited to fifty thousand dollars

($50,000) and the amount in excess of the fifty thousand dollar ($50,000) limit may be carried over and applied against the ''net tax'' in the following year, and succeeding years if necessary, in an amount which, when added to the credit allowed under subdivision (b) for that succeeding taxable year, does not exceed fifty thousand dollars ($50,000).

(f) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section attributable to those expenses.

(g) In lieu of claiming the tax credit provided by this section, the taxpayer may elect to take depreciation pursuant to Section 17250. In addition, the taxpayer may take depreciation pursuant to that section for the cost of a facility in excess of the amount of the tax credit claimed under this section.

(h) The basis for any child care facility for which a credit is allowed shall be reduced by the amount of the credit attributable to the facility. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(i) No credit shall be allowed under subparagraph (B) of paragraph (1) of subdivision (b) in the case of any taxpayer that is required by any local ordinance or regulation to provide a child care facility.

(j) (1) In order to be eligible for the credit allowed under subparagraph (A) or (B) of paragraph (1) of subdivision (b), the taxpayer shall submit to the Franchise Tax Board upon request a statement certifying that the costs for which the credit is claimed are incurred with respect to the startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of the taxpayer's employees or the children of the employees of tenants leasing commercial or office space in a building owned by the taxpayer and which will be in operation for at least 60 consecutive months after completion.

(2) If the child care center for which a credit is claimed pursuant to this section is disposed of or ceases to operate within 60 months after completion, that portion of the credit claimed which represents the remaining portion of the 60-month period shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(k) In order to be allowed the credit under subparagraph (A) or (B) of paragraph (1) of subdivision (b), the taxpayer shall indicate, in the form and manner prescribed by the Franchise Tax Board, the number of children that the child care program or facility will be able to legally accommodate.

(*l*) This section shall remain in effect only until December 1, 2007, and as of that date is repealed.

SEC. 2. Section 17052.18 of the Revenue and Taxation Code is amended to read:

17052.18. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2007, there shall be allowed as a credit against the ''net tax'' (as defined by Section 17039) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of the cost paid or incurred by the taxpayer for contributions to a qualified care plan made on behalf of any qualified dependent of the taxpayer's qualified employee.

(2) The amount of the credit allowed by this section in any taxable year shall not exceed three hundred sixty dollars ($360) for each qualified dependent.

(c) For purposes of this section:

(1) ''Qualified care plan'' means a plan providing qualified care.

(2) ''Qualified care'' includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code that is a specialized center with respect to short-term illnesses of an employee's dependents. ''Qualified care'' must be provided in this state under the authority of a license when required by California law.

(3) ''Specialized center'' means a facility that provides care to mildly ill children and that may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross-infection.

(4) ''Contributions'' include direct payments to child care programs or providers. ''Contributions'' do not include amounts contributed to a qualified care plan pursuant to a salary reduction agreement to provide benefits under a dependent care assistance program within the meaning of Section 129 of the Internal Revenue Code, as applicable, for purposes of Part 11 (commencing with Section 23001) and this part.

(5) ''Qualified employee'' means any employee of the taxpayer who is performing services for the taxpayer in this state, within the meaning of Section 25133, during the period in which the qualified care is performed.

(6) ''Employee'' includes an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(7) ''Qualified dependent'' means any dependent of a qualified employee who is under the age of 12 years.

(d) If an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children.

(e) If the duration of the child care received is less than 42 weeks, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) If the credit allowed by this section exceeds the ''net tax,'' the excess may be carried over to reduce the ''net tax'' in the following year, and succeeding years if necessary until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee and is under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year that is equal to the amount of the credit allowed under this section.

(j) If the credit is taken by an employer for contributions to a qualified care plan that is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(k) This section shall remain in effect only until December 1, 2007, and as of that date is repealed.

SEC. 3. Section 23617 of the Revenue and Taxation Code is amended to read:

23617. (a) For each taxable year beginning on or after January 1, 1988, and before January 1, 2007, there shall be allowed as a credit

against the ''tax'' (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of any of the following:

(A) The cost paid or incurred by the taxpayer on or after September 23, 1988, for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayer's employees.

(B) For each taxable year beginning on or after January 1, 1993, the cost paid or incurred by the taxpayer for startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of employees of tenants leasing commercial or office space in a building owned by the taxpayer.

(C) The cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to California child care information and referral services, including, but not limited to, those that identify local child care services, offer information describing these resources to the taxpayer's employees, and make referrals of the taxpayer's employees to child care services where there are vacancies.

In the case of a child care facility established by two or more taxpayers, the credit shall be allowed if the facility is to be used primarily by the children of the employees of each of the taxpayers or the children of the employees of tenants of each of the taxpayers.

(2) The amount of the credit allowed by this section shall not exceed fifty thousand dollars ($50,000) for any taxable year.

(c) For purposes of this section, ''startup expenses'' include, but are not limited to, feasibility studies, site preparation, and construction, renovation, or acquisition of facilities for purposes of establishing or expanding onsite or nearsite centers by one or more employers or one or more building owners leasing space to employers.

(d) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to its respective share of the costs paid or incurred.

(e) (1) In the case where the credit allowed and limited under subdivision (b) for the taxable year exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit has been exhausted. However, the excess from any one year shall not exceed fifty thousand dollars ($50,000).

(2) If the credit carryovers from preceding taxable years allowed under paragraph (1) plus the credit allowed for the taxable year under subdivision (b) would exceed an aggregate total of fifty thousand dollars ($50,000), then the credit allowed to reduce the ''tax'' under this section for the taxable year shall be limited to fifty thousand dollars ($50,000)

and the amount in excess of the fifty thousand dollar ($50,000) limit may be carried over and applied against the ''tax'' in the following year, and succeeding years if necessary, in an amount which, when added to the credit allowed under subdivision (b) for that succeeding taxable year, does not exceed fifty thousand dollars ($50,000).

(f) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section attributable to those expenses.

(g) In lieu of claiming the tax credit provided by this section, the taxpayer may elect to take depreciation pursuant to Section 24371.5. In addition, the taxpayer may take depreciation pursuant to that section for the cost of a facility in excess of the amount of the tax credit claimed under this section.

(h) The basis for any child care facility for which a credit is allowed shall be reduced by the amount of the credit attributable to the facility. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(i) No credit shall be allowed under subparagraph (B) of paragraph (1) of subdivision (b) in the case of any taxpayer that is required by any local ordinance or regulation to provide a child care facility.

(j) (1) In order to be eligible for the credit allowed under subparagraph (A) or (B) of paragraph (1) of subdivision (b), the taxpayer shall submit to the Franchise Tax Board upon request a statement certifying that the costs for which the credit is claimed are incurred with respect to the startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of the taxpayer's employees or the children of the employees of tenants leasing commercial or office space in a building owned by the taxpayer and which will be in operation for at least 60 consecutive months after completion.

(2) If the child care center for which a credit is claimed pursuant to this section is disposed of or ceases to operate within 60 months after completion, that portion of the credit claimed which represents the remaining portion of the 60-month period shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(k) In order to be allowed the credit under subparagraph (A) or (B) of paragraph (1) of subdivision (b), the taxpayer shall indicate, in the form and manner prescribed by the Franchise Tax Board, the number of children that the child care program or facility will be able to legally accommodate.

(*l*) This section shall remain in effect only until December 1, 2007, and as of that date is repealed.

SEC. 4. Section 23617.5 of the Revenue and Taxation Code is amended to read:

23617.5. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2007, there shall be allowed as a credit against the ''tax'' (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of the cost paid or incurred by the taxpayer for contributions to a qualified care plan made on behalf of any qualified dependent of the taxpayer's qualified employee.

(2) The amount of the credit allowed by this section in any taxable year shall not exceed three hundred sixty dollars ($360) for each qualified dependent.

(c) For purposes of this section:

(1) ''Qualified care plan'' means a plan providing qualified care.

(2) ''Qualified care'' includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code that is a specialized center with respect to short-term illnesses of an employee's dependents. ''Qualified care'' must be provided in this state under the authority of a license when required by California law.

(3) ''Specialized center'' means a facility that provides care to mildly ill children and that may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross-infection.

(4) ''Contributions'' include direct payments to child care programs or providers. ''Contributions'' do not include amounts contributed to a qualified care plan pursuant to a salary reduction agreement to provide benefits under a dependent care assistance program within the meaning of Section 129 of the Internal Revenue Code, as applicable, for purposes of Part 10 (commencing with Section 17001) and this part.

(5) ''Qualified employee'' means any employee of the taxpayer who is performing services for the taxpayer in this state, within the meaning of Section 25133, during the period in which the qualified care is performed.

(6) ''Employee'' includes an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(7) ''Qualified dependent'' means any dependent of a qualified employee who is under the age of 12 years.

(d) If an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children served in the facility from taxpayers claiming credits under this section.

(e) If the duration of the child care received is less than 42 weeks, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) If the credit allowed under this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee and is under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year that is equal to the amount of the credit allowed under this section.

(j) If the credit is taken by an employer for contributions to a qualified care plan that is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(k) This section shall remain in effect only until December 1, 2007, and as of that date is repealed.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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CHAPTER 651

An act to amend Sections 4504, 5246, and 17500 of, and to add Section 17400.5 to, the Family Code, and to amend Section 19271 of the Revenue and Taxation Code, relating to child support.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 4504 of the Family Code is amended to read:

4504. (a) If the noncustodial parent is receiving payments from the federal government pursuant to the Social Security Act or Railroad Retirement Act, or from the Department of Veterans Affairs because of the retirement or disability of the noncustodial parent and the noncustodial parent notifies the custodial person, or notifies the local child support agency in a case being enforced by the local child support agency pursuant to Title IV-D of the Social Security Act, then the custodial parent or other child support obligee shall contact the appropriate federal agency within 30 days of receiving notification that the noncustodial parent is receiving those payments to verify eligibility for each child to receive payments from the federal government because of the disability of the noncustodial parent. If the child is potentially eligible for those payments, the custodial parent or other child support obligee shall apply for and cooperate with the appropriate federal agency for the receipt of those benefits on behalf of each child. The noncustodial parent shall cooperate with the custodial parent or other child support obligee in making that application and shall provide any information necessary to complete the application.

(b) If the court has ordered a noncustodial parent to pay for the support of a child, payments for the support of the child made by the federal government pursuant to the Social Security Act or Railroad Retirement Act, or by the Department of Veterans Affairs because of the retirement or disability of the noncustodial parent and received by the custodial parent or other child support obligee each month shall be credited toward the amount ordered by the court to be paid for that month by the noncustodial parent for support of the child unless the payments made by the federal government were taken into consideration by the court in determining the amount of support to be paid. If a lump-sum payment which represents payments for more than one month is received by the custodial parent or other child support obligee, credit shall be given for each month for which the lump-sum payment was made.

(c) If the custodial parent or other child support obligee refuses to apply for those benefits or fails to cooperate with the appropriate federal

agency in completing the application but the child or children otherwise are eligible to receive those benefits, the noncustodial parent shall be credited toward the amount ordered by the court to be paid for that month by the noncustodial parent for support of the child or children in the amount of payment that the child or children would have received that month had the custodial parent or other child support obligee completed an application for the benefits if the noncustodial parent provides evidence to the local child support agency indicating the amount the child or children would have received. The credit for those payments shall continue until the child or children would no longer be eligible for those benefits or the order for child support for the child or children is no longer in effect, whichever occurs first.

SEC. 2. Section 5246 of the Family Code is amended to read:

5246. (a) This section applies only to Title IV-D cases where support enforcement services are being provided by the local child support agency pursuant to Section 17400.

(b) In lieu of an earnings assignment order signed by a judicial officer, the local child support agency may serve on the employer a notice of assignment in the manner specified in Section 5232. An order/notice to withhold income for child support shall have the same force and effect as an earnings assignment order signed by a judicial officer. An order/notice to withhold income for child support, when used under this section, shall be considered a notice and shall not require the signature of a judicial officer.

(c) Pursuant to Section 666 of Title 42 of the United States Code, the federally mandated order/notice to withhold income for child support shall be used for the purposes described in this section.

(d) (1) An order/notice to withhold income may not reduce the current amount withheld for court-ordered child support.

(2) If the underlying court order for support does not provide for an arrearage payment, or if an additional arrearage accrues after the date of the court order for support, the local child support agency may send an order/notice to withhold income for child support that shall be used for the purposes described in this section directly to the employer which specifies the updated arrearage amount and directs the employer to withhold an additional amount to be applied towards liquidation of the arrearages not to exceed the maximum amount permitted by Section 1673(b) of Title 15 of the United States Code.

(3) Notwithstanding paragraph (2), if an obligor is disabled, meets the SSI resource test, and is receiving Supplemental Security Income/State Supplementary Payments (SSI/SSP) or, but for excess income as described in Section 416.1100 et seq. of Part 416 of Title 20 of the Code of Federal Regulations, would be eligible to receive SSI/SSP, pursuant to Section 12200 of the Welfare and Institutions

Code, and the obligor has supplied the local child support agency with proof of his or her eligibility for and, if applicable, receipt of, SSI/SSP or Social Security Disability Insurance benefits, then the order/notice to withhold income issued by the local child support agency for the liquidation of the arrearage shall not exceed 5 percent of the obligor's total monthly Social Security Disability payments under Title II of the Social Security Act.

(e) If the obligor requests a hearing, a hearing date shall be scheduled within 20 days of the filing of the request with the court. The clerk of the court shall provide notice of the hearing to the local child support agency and the obligor no later than 10 days prior to the hearing.

(1) If at the hearing the obligor establishes that he or she is not the obligor or good cause or an alternative arrangement as provided in Section 5260, the court may order that service of the order/notice to withhold income for child support be quashed. If the court quashes service of the order/notice to withhold income for child support, the local child support agency shall notify the employer within 10 days.

(2) If the obligor contends at the hearing that the payment of arrearages at the rate specified in the order/notice to withhold income for child support is excessive or that the total arrearages owing is incorrect, and if it is determined that payment of the arrearages at the rate specified in this section creates an undue hardship upon the obligor or that the withholding would exceed the maximum amount permitted by Section 1673(b) of Title 15 of the United States Code Annotated, the rate at which the arrearages must be paid shall be reduced to a rate that is fair and reasonable considering the circumstances of the parties and the best interest of the child. If it is determined at a hearing that the total amount of arrearages calculated is erroneous, the court shall modify the amount calculated to the correct amount. If the court modifies the total amount of arrearages owed or reduces the monthly payment due on the arrearages, the local child support agency shall serve the employer with an amended order/notice to withhold income for child support within 10 days.

(f) If an obligor's current support obligation has terminated by operation of law, the local child support agency may serve an order/notice to withhold income for child support on the employer which directs the employer to continue withholding from the obligor's earnings an amount to be applied towards liquidation of the arrearages, not to exceed the maximum amount permitted by Section 1673(b) of Title 15 of the United States Code, until such time that the employer is notified by the local child support agency that the arrearages have been paid in full. The employer shall provide the obligor with a copy of the order/notice to withhold income for child support and a blank form that the obligor may file with the court to request a hearing to modify or quash

the assignment with instructions on how to file the form and obtain a hearing date. The obligor shall be entitled to the same rights to a hearing as specified in subdivision (e).

(g) The local child support agency shall retain a copy of the order/notice to withhold income for child support and shall file a copy with the court whenever a hearing concerning the order/notice to withhold income for child support is requested.

(h) The local child support agency may transmit an order/notice to withhold income for child support and other forms required by this section to the employer through electronic means.

SEC. 3. Section 17400.5 is added to the Family Code, to read:

17400.5. If an obligor has an ongoing child support order being enforced by a local child support pursuant to Title IV-D of the Social Security Act and the obligor is disabled, meets the SSI resource test, and is receiving Supplemental Security Income/State Supplemental Payments (SSI/SSP) or, but for excess income as described in Section 416.1100 et seq. of Part 416 of Title 20 of the Code of Federal Regulations, would be eligible to receive as SSI/SSP, pursuant to Section 12200 of the Welfare and Institutions Code, and the obligor has supplied the local child support agency with proof of his or her eligibility for, and, if applicable, receipt of, SSI/SSP or Social Security Disability Insurance benefits, then the local child support agency shall prepare and file a motion to modify the support obligation within 30 days of receipt of verification from the noncustodial parent or any other source of the receipt of SSI/SSP or Social Security Disability Insurance benefits. The local child support agency shall serve the motion on both the noncustodial parent and custodial person and any modification of the support order entered pursuant to the motion shall be effective as provided in Section 3653 of the Family Code.

SEC. 4. Section 17500 of the Family Code is amended to read:

17500. (a) In carrying out its obligations under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the local child support agency shall have the responsibility for promptly and effectively collecting and enforcing child support obligations.

(b) The local child support agency is the public agency responsible for administering wage withholding for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(c) Except as provided in paragraph (3) of subdivision (e) of Section 19271 of the Revenue and Taxation Code, the local child support agency shall transfer child support delinquencies to the Franchise Tax Board for collection purposes in the form and manner and at the time prescribed by the Franchise Tax Board. Collection shall be made by the Franchise Tax Board in accordance with Section 19271 of the Revenue and Taxation Code. For purposes of this subdivision, ''child support

delinquency'' means an arrearage or otherwise past due amount that accrues when an obligor fails to make any court-ordered support payment when due, which is more than 60 days past due, and the aggregate amount of which exceeds one hundred dollars ($100).

(1) If a child support delinquency exists at the time a case is opened by the local child support agency, the responsibility for the collection of the child support delinquency shall be transferred to the Franchise Tax Board no later than 30 days after receipt of the case by the local child support agency.

(2) The transfer of child support delinquencies required by this subdivision is in support of the local child support agency for purposes of efficient and effective child support enforcement and shall not in any manner transfer any responsibilities the local child support agency may have and any responsibilities the Department of Child Support Services may have as the Title IV-D agency.

SEC. 5. Section 19271 of the Revenue and Taxation Code is amended to read:

19271. (a) (1) For purposes of this article:

(A) ''Child support delinquency'' means a delinquency defined in subdivision (c) of Section 17500 of the Family Code.

(B) ''Earnings'' may include the items described in Section 5206 of the Family Code.

(2) At least 20 days prior to the date that the Franchise Tax Board commences collection action under this article, the Franchise Tax Board shall mail notice of the amount due to the obligated parent at the last known address and advise the obligated parent that failure to pay will result in collection action. If the obligated parent disagrees with the amount due, the obligated parent shall be instructed to contact the local child support agency to resolve the disagreement.

(b) (1) (A) Except as otherwise provided in subparagraph (B), when a delinquency is transferred to the Franchise Tax Board pursuant to subdivision (c) of Section 17500 of the Family Code, the amount of the child support delinquency shall be collected by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability. Notwithstanding Sections 5208 and 5246 of the Family Code, the issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes is hereby authorized until the California Child Support Automation System is operational in all 58 California counties. When the California Child Support Automation System is operational in all 58 counties, any levy or other withholding of earnings of an employee by the Franchise Tax Board to collect an amount pursuant to this section shall be made in accordance with

Sections 5208 and 5246 of the Family Code. Any other law providing for the collection of a delinquent personal income tax liability shall apply to any child support delinquency transferred to the Franchise Tax Board in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article.

(B) When a delinquency is transferred to the Franchise Tax Board, or at any time thereafter, if the obligated parent owes a delinquent personal income tax liability, the Franchise Tax Board shall not engage in, or shall cease, any involuntary collection action to collect the delinquent personal income tax liability, until the child support delinquency is paid in full. At any time, however, the Franchise Tax Board may mail any other notice to the taxpayer for voluntary payment of the delinquent personal income tax liability if the Franchise Tax Board determines that collection of the delinquent personal income tax liability will not jeopardize collection of the child support delinquency. However, the Franchise Tax Board may engage in the collection of a delinquent personal income tax liability if the obligor has entered into a payment agreement for the child support delinquency and is in compliance with that agreement, and the Franchise Tax Board determines that collection of the delinquent personal income tax liability would not jeopardize payments under the child support payment agreement.

(C) For purposes of subparagraph (B):

(i) ''Involuntary collection action'' includes those actions authorized by Section 18670, 18670.5, 18671, or 19264, by Article 3 (commencing with Section 19231), or by Chapter 5 (commencing with Section 706.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(ii) ''Delinquent personal income tax liability'' means any taxes, additions to tax, penalties, interest, fees, or other related amounts due and payable under Part 10 (commencing with Section 17001) or this part.

(iii) ''Voluntary payment'' means any payment made by obligated parents in response to any notice for voluntary payment mailed by the Franchise Tax Board.

(2) Any compensation, fee, commission, expense, or any other fee for service incurred by the Franchise Tax Board in the collection of a child support delinquency authorized under this article shall not be an obligation of, or collected from, the obligated parent. A transferred child support delinquency shall be final and due and payable to the State of California upon written notice to the obligated parent by the Franchise Tax Board.

(3) For purposes of administering this article:

(A) This chapter and Chapter 7 (commencing with Section 19501) shall apply, except as otherwise provided by this article.

(B) Any services, information, or enforcement remedies available to a local child support agency or the Title IV-D agency in collecting child support delinquencies or locating absent or noncustodial parents shall be available to the Franchise Tax Board for purposes of collecting child support delinquencies under this article, including, but not limited to, any information that may be disclosed by the Franchise Tax Board to the California Parent Locator Service under Section 19548. However, in no event shall the Franchise Tax Board take any additional enforcement remedies if a court has ordered an obligor to make scheduled payments on a child support arrearages obligation and the parent is in compliance with that order.

(C) A request by the Franchise Tax Board for information from a financial institution shall be treated in the same manner and to the same extent as a request for information from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code for purposes of Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code (relating to governmental access to financial records), notwithstanding any other provision of law which is inconsistent or contrary to this paragraph.

(D) The amount to be withheld in an order and levy to collect child support delinquencies under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure is the amount required to be withheld pursuant to an earnings withholding order for support under Section 706.052 of the Code of Civil Procedure.

(E) Nothing in this article shall be construed to modify the tax intercept provisions of Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) Interest on the delinquency shall be computed pursuant to Section 685.010 of the Code of Civil Procedure.

(d) (1) In no event shall a collection under this article be construed to be a payment of income taxes imposed under this part.

(2) In the event an obligated parent overpays a liability imposed under this part, the overpayment shall not be credited against any delinquency collected pursuant to this article. In the event an overpayment of a liability imposed under this part is offset and distributed to a local child support agency pursuant to Sections 12419.3 and 12419.5 of the Government Code or Section 708.740 of the Code of Civil Procedure, and thereby reduces the amount of the referred delinquency, the local child support agency shall immediately notify the Franchise Tax Board of that reduction, unless the Franchise Tax Board directs otherwise.

(e) (1) The Franchise Tax Board shall administer this article, in conjunction with regulations adopted by the Department of Child Support Services in consultation with the Franchise Tax Board, including those set forth in Section 17306 of the Family Code.

(2) The Franchise Tax Board may transfer to or allow a local child support agency to retain a child support delinquency for a specified purpose for collection where the Franchise Tax Board determines, pursuant to regulations established by the Department of Child Support Services, that the transfer or retention of the delinquency for the purpose so specified will enhance the collectibility of the delinquency. The Franchise Tax Board, with the concurrence of the Department of Child Support Services, shall establish a process whereby a local child support agency may request and shall be allowed to withdraw, rescind, or otherwise recall the transfer of an account that has been transferred to the Franchise Tax Board.

(3) If an obligor is disabled, meets the SSI resource test, and is receiving Supplemental Security Income/State Supplementary Payments (SSI/SSP), or, but for excess income as described in Section 416.1100 et seq. of Part 416 of Title 20 of the Code of Federal Regulations, would be eligible to receive as Supplemental Security Income/State Supplementary Payments (SSI/SSP), pursuant to Section 12200 of the Welfare and Institutions Code, and the obligor has supplied the local child support agency with proof of his or her eligibility for, and, if applicable, receipt of, SSI/SSP or Social Security Disability Insurance benefits, then the child support delinquency shall not be referred to the Franchise Tax Board for collection, and if referred, shall be withdrawn, rescinded, or otherwise recalled from the Franchise Tax Board by the local child support agency. The Franchise Tax Board shall not take any collection action, or if the agency has already taken collection action, shall cease collection actions in the case of a disabled obligor when the delinquency is withdrawn, rescinded, or otherwise recalled by the local child support agency in accordance with the process established as described in paragraph (2).

(f) Except as otherwise provided in this article, any child support delinquency transferred to the Franchise Tax Board pursuant to this article shall be treated as a child support delinquency for all other purposes, and any collection action by the local child support agency or the Franchise Tax Board with respect to any delinquency referred pursuant to this article shall have the same priority against attachment, execution, assignment, or other collection action as is provided by any other provision of state law.

(g) Except as otherwise specifically provided in subparagraph (B) of paragraph (1) of subdivision (b), the child support collection activities authorized by this article shall not interfere with the primary mission of

the Franchise Tax Board to fairly and efficiently administer the Revenue and Taxation Code for which it is responsible.

(h) Information disclosed to the Franchise Tax Board shall be considered information that may be disclosed by the Franchise Tax Board under the authority of Section 19548 and may be disseminated by the Franchise Tax Board accordingly for the purposes specified in Sections 17505 and 17506 of the Family Code (in accordance with, and to the extent permitted by, Section 17514 of the Family Code and any other state or federal law).

(i) A local child support agency may not apply to the Department of Child Support Services for an exemption from the transfer of responsibilities and authorities to the Franchise Tax Board under the Family Code or participation under Section 19271.6.

(j) Except in those cases meeting the specified circumstances described in the regulations or in accordance with the processes prescribed in paragraphs (2) and (3) of subdivision (e), a local child support agency shall not request or be allowed to retain, withdraw, rescind, or otherwise recall the transfer of a child support delinquency transferred to the Franchise Tax Board.

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.

CHAPTER 652

An act to amend Sections 11320.1, 11322.9, and 11454 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 11320.1 of the Welfare and Institutions Code is amended to read:

11320.1. Subsequent to the commencement of the receipt of aid under this chapter, the sequence of employment related activities

required of participants under this article, unless exempted under Section 11320.3, shall be as follows:

(a) Job search. Recipients shall, and applicants may, at the option of a county and with the consent of the applicant, receive orientation to the welfare-to-work program provided under this article, receive appraisal pursuant to Section 11325.2, and participate in job search and job club activities provided pursuant to Section 11325.22.

(b) Assessment. If employment is not found during the period provided for pursuant to subdivision (a), or at any time the county determines that participation in job search for the period specified in subdivision (a) of Section 11325.22 is not likely to lead to employment, the participant shall be referred to assessment, as provided for in Section 11325.4. Following assessment, the county and the participant shall develop a welfare-to-work plan, as specified in Section 11325.21. The plan shall specify the activities provided for in Section 11322.6 to which the participant shall be assigned, and the supportive services, as provided for pursuant to Section 11323.2, with which the recipient will be provided.

(c) Work activities. A participant who has signed a welfare-to-work plan pursuant to Section 11325.21 shall participate in work activities until he or she has received aid for the period specified in subdivision (a) of Section 11454. If, after the period specified in paragraph (1) of subdivision (a) of Section 11454, the participant has not obtained unsubsidized employment, the county may extend the welfare-to-work plan by up to six months if the county determines that the extension is likely to lead to unsubsidized employment or if local unemployment or other conditions in the local economy are such that employment is not available. If a recipient has received aid for the period specified in subdivision (a) of Section 11454 and returns to aid after a break in aid of at least one month, the county shall determine whether to require the recipient to participate in welfare-to-work activities or in community service.

(d) Community service.

(1) If a participant has received aid for the period specified in subdivision (a) of Section 11454, and the participant has not found unsubsidized employment sufficient to meet the hours of participation required by Section 11322.8 and the county has certified that no job is available for that participant, the participant shall remain eligible for aid under this chapter only if he or she participates in community service activities pursuant to Section 11322.9, or the United States Department of Labor welfare-to-work grant program community service or work experience activities pursuant to Section 403(a)(5)(C)(i) of the Social Security Act (42 U.S.C. Sec. 603(a)(5)(C)(i)) for sufficient hours to meet the participation requirements of Section 11322.8.

(2) The county shall provide community service activities assignments as described in Section 11322.9.

(3) An individual may participate in community service activities until he or she has received aid for a total of 60 months.

SEC. 2. Section 11322.9 of the Welfare and Institutions Code is amended to read:

11322.9. (a) In accordance with the requirements of this section:

(1) Counties may provide for community service activities for individuals who have not completed the period specified in subdivision (a) of Section 11454 and are not employed in unsubsidized employment, sufficient to meet the hours of participation required by Section 11322.8.

(2) Counties shall provide for community service activities or the United States Department of Labor welfare-to-work grant program community service or work experience activities pursuant to Section 403(a)(5)(C)(i) of the Social Security Act (42 U.S.C. Sec. 603(a)(5)(C)(i)) for individuals who have completed the period as specified in subdivision (a) of Section 11454, who cannot find unsubsidized employment sufficient to meet the hours of participation required by Section 11322.8, and the county certifies that no job is currently available to fulfill the hours required by Section 11322.8, and who continue to meet the financial eligibility criteria for aid under this chapter.

(b) Community service activities shall meet all of the following criteria:

(1) Be performed in the public and private nonprofit sector.

(2) Provide participants with job skills that can lead to unsubsidized employment.

(3) Comply with the antidisplacement provisions contained in Section 11324.6.

(c) Participants in community service activities shall do all of the following:

(1) Participate in a community service activity for the number of hours required by Section 11322.8, unless fewer hours of community service participation are required by federal law.

(2) Participate in other work activities for the number of hours equal to the difference between the hours of participation in community service and the number of hours of participation required under Section 11322.8.

(d) The county plan pursuant to Section 10531 shall include a component, developed by the county in collaboration with local private sector employers, local education agencies, county welfare departments, organized labor, recipients of aid under this chapter, and government and community-based organizations providing job training and economic development, in order to identify all of the following:

(1) Unmet community needs that could be met through community service activities.

(2) The target population to be served.

(3) Entities responsible for project development, fiscal administration, and case management services.

(4) The terms of community service activities, that, to the extent feasible, shall be temporary and transitional, and not permanent.

(5) Supportive efforts, including job search, education, and training, which shall be provided to participants in community service activities.

(6) If the county intends to include grant-based on-the-job training in its community service plan, the process by which the county will comply with the voluntary consent form requirement established in subdivision (f) of Section 11322.6, including a list of the languages in which the consent form will be available.

(e) Aid under this chapter for any participant who fails to comply with the requirements of this section without good cause shall be reduced in accordance with Section 11327.5.

(f) Child care as a supportive service shall be provided to participants in community service activities pursuant to Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code, and Section 11323.2. Other supportive services may be provided by the county at the county's option. However, if the county does not provide mental health services pursuant to Section 11325.7, the county shall indicate in its county plan under Chapter 1.3 (commencing with Section 10530) how mental health services needed by participants will be made available during participation in a community service job.

SEC. 3. Section 11454 of the Welfare and Institutions Code is amended to read:

11454. (a) (1) Except as otherwise provided in this chapter and in paragraph (2), a parent or caretaker relative shall not be eligible to receive aid for a cumulative period of more than 18 months after the individual signs, or refuses, without good cause, to sign a welfare-to-work plan, unless it is certified by the county that there is no job currently available for the recipient and the recipient participates in community service activities, pursuant to Section 11322.9, or the United States Department of Labor welfare-to-work grant program community service or work experience activities pursuant to Section 403(a)(5)(C)(i) of the Social Security Act (42 U.S.C. Sec. 603(a)(5)(C)(i)) for sufficient hours to meet the participation requirements of Section 11322.8.

(2) A parent or caretaker relative recipient who is subject to the requirements of paragraph (2) of subdivision (c) of Section 10532 shall not be eligible to receive aid under this chapter for a cumulative period of more than 24 months, unless it is certified by the county that there is no job currently available for the recipient and the recipient participates

in community service activities pursuant to Section 11322.9, or the United States Department of Labor welfare-to-work grant program community service or work experience activities pursuant to Section 403(a)(5)(C)(i) of the Social Security Act (42 U.S.C. Sec. 603(a)(5)(C)(i)) for sufficient hours to meet the participation requirements of Section 11322.8.

(3) For purposes of this subdivision, a job shall not be considered to be currently available if a recipient has taken and continues to take all steps to apply for appropriate positions and has not refused an offer of employment without good cause.

(4) A parent or caretaker relative recipient to whom paragraph (1) or (2) applies, who is in a job for less than the number of hours required by Section 11322.8, and for whom no job is currently available for the required number of hours, shall remain eligible for aid under this chapter and shall participate in community service activities or the United States Department of Labor welfare-to-work grant program community service or work experience activities pursuant to Section 403(a)(5)(C)(i) of the Social Security Act (42 U.S.C. Sec. 603(a)(5)(C)(i)) for the additional number of hours necessary to meet the requirements of Section 11322.8.

(b) A parent or caretaker relative shall not be eligible for aid under this chapter when he or she has received aid under this chapter or from any state under the Temporary Assistance for Needy Families program (Part A (commencing with Section 401) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 601 et seq.) for a cumulative total of 60 months.

(c) No month in which aid has been received prior to January 1, 1998, shall be taken into consideration in computing the 18-month, 24-month, or 60-month limitation provided for in subdivision (a) or (b).

(d) Each county shall adopt criteria for extending the 18-month limitation prescribed by subdivision (a) for up to six months if the extension is likely to result in unsubsidized employment or if local unemployment rates or other conditions in the local economy are such that employment is not available.

(e) Subdivision (b) shall not be applicable when all parent or caretaker relatives of the aided child who are living in the home of the child meet any of the following requirements:

(1) They are 60 years of age or older.

(2) They meet one of the conditions specified in paragraph (4) or (5) of subdivision (b) of Section 11320.3.

(3) They are not included in the assistance unit.

(4) They are receiving benefits under Section 12200 or Section 12300, State Disability Insurance benefits or Workers' Compensation Temporary Disability Insurance, if the disability significantly impairs

the recipient's ability to be regularly employed or participate in welfare-to-work activities.

(5) They are incapable of maintaining employment or participating in welfare-to-work activities, as determined by the county, based on the assessment of the individual and the individual has a history of participation and full cooperation in welfare-to-work activities.

SEC. 4. (a) Notwithstanding the 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, through June 2002, the State Department of Social Services may implement the amendments to Sections 11320.1 and 11454 of the Welfare and Institutions Code contained in this act through county letters or similar instructions from the director.

(b) The director shall adopt regulations, as otherwise necessary, to implement the applicable provisions of the act no later than October 1, 2002.

SEC. 5. No appropriation pursuant to Section 15200 of the Welfare and Institutions Code shall be made for the purpose of funding the amendments made to Sections 11320.1 and 11454 of the Welfare and Institutions Code by this act.

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.

CHAPTER 653

An act to amend Sections 1505, 1521.5, 1521.6, and 1525.5 of the Health and Safety Code, to amend Section 11105.2 of the Penal Code, and to amend Sections 309, 319, 361.2, 361.3, 361.5, 366, 366.1, 727, 11400, 11401, 11402, 11461, 16504.5, 16507.5, and 16518 of, and to add Section 362.7 to, the Welfare and Institutions Code, relating to foster care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. It is the intent of the Legislature to continue to promote the successful implementation of the statutory preference for foster care placement with relative caregivers as set forth in Section 7950 of the Family Code. Placement of a child with a relative caregiver most closely meets the statutory requirement of Section 16000 of the Welfare and Institutions Code that a child live in the least restrictive and most familylike setting possible. California's clear mandate for an exhaustive search for available relatives and primary consideration of these relatives for placement is in accord with federal Title IV-E requirements that the ''State shall consider giving preference to an adult relative over a nonrelated caregiver when determining placement for a child.''

The intent of the Legislature is to clarify that California's relative caregiver approval process employs the same standards used to license foster care homes in accordance with the federal Adoption and Safe Families Act of 1997, (P.L. 105-89), and, therefore, California's compliance entitles it to continuous Title IV-E foster care maintenance and administration payments.

SEC. 2. 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*) (1) Any home of a relative caregiver of children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(2) Any home of a nonrelative extended family member, as described in Section 362.7 of the Welfare and Institutions Code, providing care to children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(m) Any supported living arrangement for individuals with developmental disabilities as defined in Section 4689 of the Welfare and Institutions Code.

(n) (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.

(o) 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.

(p) 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.

(q) Any similar facility determined by the director.

SEC. 3. Section 1521.5 of the Health and Safety Code is amended to read:

1521.5. (a) The county welfare director shall, prior to the issuance of any foster family home license, ensure that the county licensing staff, or the placement staff, conducts one or more in-home interviews with the prospective foster parent sufficient to collect information on caregiver qualifications that may be used by the placement agency to evaluate the ability, willingness, and readiness of the prospective foster parent to meet the varying needs of children. The inability of a prospective foster parent to meet the varying needs of children, shall not, in and of itself, preclude a prospective foster parent from obtaining a foster family home license. In counties in which the county has not contracted with the state to license foster family homes, the in-home interview shall be done by the placement agency.

(b) All in-home interviews required by this section shall be on an in-person basis.

(c) If the in-home interview is conducted by the licensing agency, it shall be a part of the licensing record, and shall be shared with the placement agency pursuant to subdivision (e) of Section 1798.24 of the Civil Code.

(d) The in-home interview required by this section shall be completed no later than 120 days following notification by the licensing agency.

(e) No license shall be issued unless an in-home interview has been conducted as required by this section.

SEC. 4. Section 1521.6 of the Health and Safety Code is amended to read:

1521.6. (a) The Legislature recognizes the importance of ensuring that prospective foster family homes meet specified health and safety requirements. Moreover, the Legislature acknowledges that there is a further need to evaluate a licensed foster parent's ability, readiness, and willingness to meet the varying needs of children, including hard-to-place children, in order to ensure competent placement resources. Therefore, it is the intent of the Legislature that the State Department of Social Services, in consultation with county placement agencies, foster care providers, and other interested parties, develop and implement through regulations, a comprehensive home study process that integrates the decision outcome of the home study developed pursuant to Section 16518 of the Welfare and Institutions Code, as a criteria for placement.

(b) This section shall become inoperative on the date the regulations adopted pursuant to this section are filed with the Secretary of State.

SEC. 5. Section 1525.5 of the Health and Safety Code is amended to read:

1525.5. (a) The director may issue provisional licenses to operate community care facilities for facilities which the director determines are in substantial compliance with the provisions of this chapter and the rules and regulations adopted pursuant thereto, provided, that no life safety risks are involved, as determined by the director. In determining whether any life safety risks are involved, the director shall require completion of all applicable fire clearances and criminal record clearances as otherwise required by the department's rules and regulations. The provisional license shall expire six months from the date of issuance, or at any earlier time as the director may determine, and may not be renewed. However, the director may extend the term of a provisional license for an additional six months at time of application, if it is determined that more than six months will be required to achieve full compliance with licensing standards due to circumstances beyond the control of the applicant, provided all other requirements for a license have been met.

(b) This section shall not apply to foster family homes.

SEC. 6. Section 11105.2 of the Penal Code is amended to read:

11105.2. (a) The Department of Justice may provide subsequent arrest notification to any agency authorized by Section 11105 to receive state summary criminal history information to assist in fulfilling employment, licensing, certification duties, or the duties of approving relative caregivers and nonrelative extended family members, upon the arrest of any person whose fingerprints are maintained on file at the Department of Justice as the result of an application for licensing, employment, certification, or approval. The notification shall consist of a current copy of the person's state summary criminal history transcript.

(b) For purposes of this section, ''approval'' means those duties described in subdivision (d) of Section 309 of the Welfare and Institutions Code for approving the home of a relative caregiver or of a nonrelative extended family member for placement of a child supervised by the juvenile court.

(c) Any agency, other than a law enforcement agency employing peace officers as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31, shall enter into a contract with the Department of Justice in order to receive notification of subsequent arrests for licensing, employment, or certification purposes.

(d) Any agency which submits the fingerprints of applicants for licensing, employment, certification, or approval to the Department of Justice for the purpose of establishing a record of the applicant to receive notification of subsequent arrests shall immediately notify the department when the employment of the applicant is terminated, when the applicant's license or certificate is revoked, when the applicant may no longer renew or reinstate the license or certificate, or when a relative caregiver's or nonrelative extended family member's approval is terminated. The Department of Justice shall terminate subsequent arrest notification on any applicant upon the request of the licensing, employment, certifying, or approving authority.

(e) Any agency receiving a notification of subsequent arrest for a person unknown to the agency, or for a person no longer employed by the agency, or no longer eligible to renew the certificate or license for which subsequent arrest notification service was established shall immediately return the subsequent arrest notification to the Department of Justice, informing the department that the agency is no longer interested in the applicant. The agency shall not record or otherwise retain any information received as a result of the subsequent arrest notice.

(f) Any agency which submits the fingerprints of an applicant for employment, licensing, certification, or approval to the Department of Justice for the purpose of establishing a record at the department to receive notification of subsequent arrest shall immediately notify the department if the applicant is not subsequently employed, or if the applicant is denied licensing certification, or approval.

(g) An agency which fails to provide the Department of Justice with notification as set forth in subdivisions (c), (d), and (e) may be denied further subsequent arrest notification service.

(h) Notwithstanding subdivisions (c), (d), and (f), subsequent arrest notification by the Department of Justice and retention by the employing

agency shall continue as to retired peace officers listed in subdivision (c) of Section 830.5.

SEC. 7. 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.

(5) The parent or other person having lawful custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code and did not reclaim the child within the 14-day period specified in subdivision (e) of that section.

(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 county welfare department shall initiate an assessment of the relative's suitability, which shall include an in-home inspection to assess the safety of the home and the ability of the relative to care for the child's needs, and a consideration of the results of a criminal records check and a check of allegations of prior child abuse or neglect concerning the relative and other adults in the home. The

standards used to evaluate and grant or deny approval of the home of the relative and of the home of a nonrelative extended family member, as described in Section 362.7, shall be the same standards set forth in regulations for the licensing of foster family homes which prescribe standards of safety and sanitation for the physical plant and standards for basic personal care, supervision, and services provided by the caregiver. If a relative or nonrelative extended family member meets all other conditions for approval, except for the receipt of the Federal Bureau of Investigation's criminal history information for the relative or nonrelative extended family member, and other adults in the home, as indicated, the county welfare department may approve the home and document that approval, if the relative or nonrelative extended family member, and each adult in the home, has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after the approval has been granted, the department determines that the relative or nonrelative extended family member or other adult in the home has a criminal record, the approval may be terminated.

(e) This section shall be repealed on January 1, 2006, unless a later enacted statute extends or deletes that date.

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 county welfare department shall initiate an assessment of the relative's suitability, which shall include an in-home inspection to assess the safety of the home and the ability of the relative to care for the child's needs, and a consideration of the results of a criminal records check and a check of allegations of prior child abuse or neglect concerning the relative and other adults in the home. The standards used to evaluate and grant or deny approval of the home of a relative or a nonrelative extended family member, as described in Section 362.7, shall be the same standards set forth in regulations for licensing foster family homes. These regulations prescribe standards of safety and sanitation for the physical plant and standards for basic personal care, supervision, and services provided by the caregiver. If a relative or nonrelative extended family member meets all other conditions for approval, except for the receipt of the Federal Bureau of Investigations' criminal history information for a relative, or nonrelative extended family member, and other adults in the home, as indicated, the county welfare department may approve the home and document that approval, if the relative, or nonrelative extended family member, and each adult in the home has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after the approval has been granted, the department determines that the relative or nonrelative extended family member or other adult in the home has a criminal record, the approval may be terminated.

SEC. 9. Section 319 of the Welfare and Institutions Code is amended to read:

319. (a) 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.

(b) 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; 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, the court finds that continuance in the parent's or guardian's home is contrary to the child's welfare, and any of the following circumstances exist:

(1) 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.

(2) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(3) The child has left a placement in which he or she was placed by the juvenile court.

(4) The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home.

(c) If the matter is continued pursuant to Section 322 or for any other reason, the court shall find that the continuance of the child in the parent's or guardian's home is contrary to the child's welfare at the initial petition hearing or order the release of the child from custody.

(d) (1) The court shall also make a determination on the record, referencing the social worker's report or other evidence relied upon, 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) and 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.

(2) 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, approved, and willing to care for the child.

(e) 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, shall reference the social worker's report or other evidence relied upon to make its determination whether continuance in the home of the parent or legal guardian in contrary to the child's welfare, shall order temporary placement and care of the child to be vested with the county child welfare department pending the hearing held pursuant to Section 355 or further order of the court, and shall order services to be provided as soon as possible to reunify the child and his or her family if appropriate.

(f) When the child is not released from custody, the court may order that the child shall be placed in the approved home of a relative, in an emergency shelter or other suitable licensed place, in a place exempt from licensure designated by the juvenile court, or in the approved home of a nonrelative extended family member as defined in Section 362.7 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 sibling of the child.

The court shall consider the recommendations of the social worker based on the approval of the relative's home, 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 court shall order the parent to disclose to the social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child. The social worker shall initiate the assessment pursuant to Section 361.3 of any relative to be considered for continuing placement.

SEC. 10. 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 noncustodial parent as described in subdivision (a).

(2) The approved home of a relative.

(3) The approved home of a nonrelative extended family member as defined in Section 362.7.

(4) 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.

(5) A suitable licensed community care facility.

(6) 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.

(7) A home or facility in accordance with the federal Indian Child Welfare Act.

(8) 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 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 social worker.

(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 there are any siblings under the court's jurisdiction, the nature of the relationship between the child and his or her siblings, the appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002, and the impact of the sibling relationships on the child's placement and planning for legal permanence.

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.

(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 a relative to be considered appropriate to receive placement of a child under this section, the relative's home shall first be approved pursuant to the process and standards described in subdivision (d) of Section 309.

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. 11.3. Section 361.5 of the Welfare and Institutions Code, as amended by Section 5 of Chapter 824 of the Statutes of 2000, 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, except as otherwise provided in paragraph (3).

(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.

(3) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under the age of three years on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services to some or all of the sibling group may be limited to a period of six months from the date the child entered foster care. For the purposes of this paragraph, ''a sibling group'' shall mean two or more children who are related to each other as full or half-siblings.

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), (2), and (3), 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 applicable time period under paragraph (1), (2), or (3) shall not serve to interrupt the running of the period. If at the end of the applicable time 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 or is a member of a sibling group as described in paragraph (3), 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. The court shall inform the parent or guardian of the factors used in subdivision (e) of Section 366.21 to determine whether to limit services to six months for some or all members of a sibling group as described in paragraph (3).

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; or that the parent or other person having custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code. 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 the court ordered termination of reunification services 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) 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 parental rights of a parent over any sibling or half-sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent 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 the parent.

(12) 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.

(13) 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.

(14) 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.

(15) 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), or (15) 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 applicable time limitations 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), (14), or (15) 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.

(j) This section shall be repealed on January 1, 2006, unless a later enacted statute extends or deletes that date.

SEC. 11.6. Section 361.5 of the Welfare and Institutions Code, as added by Section 5.5 of Chapter 824 of the Statutes of 2000, 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, except as otherwise provided in paragraph (3).

(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.

(3) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under the age of three years on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services to some or all of the sibling group may be limited to a period of six months from the date the child entered foster care. For the purposes of this paragraph, ''a sibling group'' shall mean two or more children who are related to each other as full or half-siblings.

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), (2), and (3), 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 applicable time period under paragraph (1), (2), or (3) shall not serve to interrupt the running of the period. If at the end of the applicable time 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 or is a member of a sibling group as described in paragraph (3), 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. The court shall inform the parent or guardian of the factors used in subdivision (e) of Section 366.21 to determine whether to limit services to six months for some or all members of a sibling group as described in paragraph (3).

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 the court ordered termination of reunification services 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), 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 parental rights of a parent over any sibling or half-sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent 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 the parent.

(12) 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.

(13) 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.

(14) 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.

(15) 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), or (15) 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 applicable time limitations

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), (14), or (15) 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.

(j) This section shall become operative on January 1, 2006, unless a later enacted statute extends or deletes that date.

SEC. 12. Section 362.7 is added to the Welfare and Institutions Code, to read:

362.7. When the home of a nonrelative extended family member is being considered for placement of a child, the home shall be evaluated, and approval of that home shall be granted or denied, pursuant to the same standards set forth in the regulations for the licensing of foster family homes which prescribe standards of safety and sanitation for the physical plant and standards for basic personal care, supervision, and services provided by the caregiver.

A ''nonrelative extended family member'' is defined as any adult caregiver who has an established familial or mentoring relationship with the child. The county welfare department shall verify the existence of a relationship through interviews with the parent and child or with one or more third parties. The parties may include relatives of the child, teachers, medical professionals, clergy, neighbors, and family friends.

SEC. 12.3. Section 366 of the Welfare and Institutions Code is amended to read:

366. (a) (1) 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 and shall determine all of the following:

(A) The continuing necessity for and appropriateness of the placement.

(B) The extent of the agency's compliance with the case plan in making reasonable efforts to return the child to a safe home and to

complete any steps necessary to finalize the permanent placement of the child.

(C) Whether the child has other siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(i) The nature of the relationship between the child and his or her siblings.

(ii) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(iii) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(iv) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(v) The impact of the sibling relationships on the child's placement and planning for legal permanence.

(vi) The continuing need to suspend sibling interaction, if applicable, pursuant to subdivision (c) of Section 16002.

The factors the court may consider in making a determination regarding the nature of the child's sibling relationships may include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(D) The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care.

(2) The court shall project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(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. 12.6. 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.

(e) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(1) The nature of the relationship between the child and his or her siblings.

(2) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(3) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(4) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(5) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factual discussion shall include a discussion of indicators of the nature of the child's sibling relationships including, but not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

SEC. 13. Section 727 of the Welfare and Institutions Code is amended to read:

727. (a) When a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 601 or 602 the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies, the court may, after giving

notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to the minor. However, no governmental agency shall be joined as a party in a juvenile court proceeding in which a minor has been ordered committed to the Department of the Youth Authority. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies which have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the minor.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the minor is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency has complied with that chapter.

In the discretion of the court, a ward may be ordered to be on probation without supervision of the probation officer. The court, in so ordering, may impose on the ward any and all reasonable conditions of behavior as may be appropriate under this disposition. A minor who has been adjudged a ward of the court on the basis of the commission of any of the offenses described in subdivision (b) or paragraph (2) of subdivision (d) of Section 707, Section 459 of the Penal Code, or subdivision (a) of Section 11350 of the Health and Safety Code, shall not be eligible for probation without supervision of the probation officer. A minor who has been adjudged a ward of the court on the basis of the commission of any offense involving the sale or possession for sale of a controlled substance, except misdemeanor offenses involving marijuana, as specified in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, or of an offense in violation of Section 12220 of the Penal Code, shall be eligible for probation without supervision of the probation officer only when the court determines that the interests of justice would best be served and states reasons on the record for that determination.

In all other cases, the court shall order the care, custody, and control of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The approved home of a relative, or the approved home of a nonrelative, extended family member as defined in Section 362.7. When a decision has been made to place the minor in the home of a relative, the court may authorize the relative to give legal consent for the minor's medical, surgical, and dental care and education as if the relative caretaker were the custodial parent of the minor.

(2) A suitable licensed community care facility.

(3) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(b) When a minor has been adjudged a ward of the court on the ground that he or she is a person described in Section 601 or 602 and the court finds that notice has been given in accordance with Section 661, and when the court orders that a parent or guardian shall retain custody of that minor either subject to or without the supervision of the probation officer, the parent or guardian may be required to participate with that minor in a counseling or education program including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents and guardians of the minor who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out subdivisions (a) and (b), including orders to appear before a county financial evaluation officer and orders directing the parents or guardians to ensure the minor's regular school attendance and to make reasonable efforts to obtain appropriate educational services necessary to meet the needs of the minor.

When counseling or other treatment services are ordered for the minor, the parent, guardian, or foster parent shall be ordered to participate in those services, unless participation by the parent, guardian, or foster parent is deemed by the court to be inappropriate or potentially detrimental to the child.

SEC. 14. 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) ''Nonrelative extended family member'' means an adult caregiver who has an established familial or mentoring relationship with the child, as described in Section 362.7.

(o) ''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.

(p) ''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.

(q) ''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.

(r) ''Transitional housing placement facility'' means either of the following:

(1) 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 16

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.

(2) A facility certified to provide transitional housing services pursuant to subdivision (e) of Section 1559.110 of the Health and Safety Code.

(s) ''Transitional housing placement program'' means a program that provides supervised housing opportunities to eligible youth pursuant to Article 4 (commencing with Section 16522) of Chapter 5 of Part 4.

SEC. 15. 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 those 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, and any of the following applies:

(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, that 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 meets the conditions of subdivision (b).

(2) The child has been deprived of parental support or care for any of the reasons set forth in Section 11250.

(3) The child has 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. 16. Section 11402 of the Welfare and Institutions Code is amended to read:

11402. In order to be eligible for AFDC-FC, a child shall be placed in one of the following:

(a) The approved home of a relative, provided the child is otherwise eligible for federal financial participation in the AFDC-FC payment.

(b) (1) The licensed family home of a nonrelative.

(2) The approved home of a nonrelative extended family member as described in Section 362.7.

(c) A licensed group home, as defined in subdivision (h) of Section 11400, provided that the placement worker has documented that the placement is necessary to meet the treatment needs of the child and that the facility offers those treatment services.

(d) The home of a nonrelated legal guardian or the home of a former nonrelated legal guardian when the guardianship of a child who is otherwise eligible for AFDC-FC has been dismissed due to the child's attaining 18 years of age.

(e) An exclusive-use home.

(f) A licensed transitional housing placement facility as described in Health and Safety Code Section 1559.110 and as defined in Section 11400.

(g) An out-of-state group home, provided that the placement worker, in addition to complying with all other statutory requirements for placing a minor in an out-of-state group home, documents that the requirements of Section 7911.1 of the Family Code have been met.

SEC. 17. Section 11461 of the Welfare and Institutions Code is amended to read:

11461. (a) For children placed in a licensed or approved family home with a capacity of six or less, or in an approved home of a relative or nonrelated legal guardian, or the approved home of a nonrelative

extended family member as described in Section 362.7, the per child per month rates in the following schedule shall be in effect for the period July 1, 1989, through December 31, 1989:

Age	Basic rate
0–4	$ 294
5–8	319
9–11	340
12–14	378
15–20	412

(b) (1) Any county that, as of October 1, 1989, has in effect a basic rate that is at the levels set forth in the schedule in subdivision (a), shall continue to receive state participation, as specified in subdivision (c) of Section 15200, at these levels.

(2) Any county that, as of October 1, 1989, has in effect a basic rate that exceeds a level set forth in the schedule in subdivision (a), shall continue to receive the same level of state participation as it received on October 1, 1989.

(c) The amounts in the schedule of basic rates in subdivision (a) shall be adjusted as follows:

(1) Effective January 1, 1990, the amounts in the schedule of basic rates in subdivision (a) shall be increased by 12 percent.

(2) Effective May 1, 1990, any county that did not increase the basic rate by 12 percent on January 1, 1990, shall do both of the following:

(A) Increase the basic rate in effect December 31, 1989, for which state participation is received by 12 percent.

(B) Increase the basic rate, as adjusted pursuant to subparagraph (A) by an additional 5 percent.

(3) (A) Except as provided in subparagraph (B), effective July 1, 1990, for the 1990–91 fiscal year, the amounts in the schedule of basic rates in subdivision (a) shall be increased by an additional 5 percent.

(B) The rate increase required by subparagraph (A) shall not be applied to rates increased May 1, 1990, pursuant to paragraph (2).

(4) Effective July 1, 1998, the amounts in the schedule of basic rates in subdivision (a) shall be increased by 6 percent. Notwithstanding any other provision of law, the 6-percent increase provided for in this paragraph shall, retroactive to July 1, 1998, apply to every county, including any county to which paragraph (2) of subdivision (b) applies, and shall apply to foster care for every age group.

(5) Notwithstanding any other provision of law, any increase that takes effect after July 1, 1998, shall apply to every county, including any county to which paragraph (2) of subdivision (b) applies, and shall apply to foster care for every age group.

(6) The increase in the basic foster family home rate shall apply only to children placed in a licensed foster family home receiving the basic rate or in an approved home of a relative or nonrelative extended family member, as described in Section 362.7 or nonrelated legal guardian receiving the basic rate. The increased rate shall not be used to compute the monthly amount that may be paid to licensed foster family agencies for the placement of children in certified foster homes.

(d) (1) (A) Beginning with the 1991–92 fiscal year, the schedule of basic rates in subdivision (a) shall be adjusted by the percentage changes in the California Necessities Index, computed pursuant to the methodology described in Section 11453, subject to the availability of funds.

(B) In addition to the adjustment in subparagraph (A) effective January 1, 2000, the schedule of basic rates in subdivision (a) shall be increased by 2.36 percent rounded to the nearest dollar.

(2) (A) Any county that, as of the 1991–92 fiscal year, receives state participation for a basic rate that exceeds the amount set forth in the schedule of basic rates in subdivision (a) shall receive an increase each year in state participation for that basic rate of one-half of the percentage adjustments specified in paragraph (1) until the difference between the county's adjusted state participation level for its basic rate and the adjusted schedule of basic rates is eliminated.

(B) Notwithstanding subparagraph (A), all counties for the 1999–2000 fiscal year shall receive an increase in state participation for the basic rate of the entire percentage adjustment described in paragraph (1).

(3) If a county has, after receiving the adjustments specified in paragraph (2), a state participation level for a basic rate that is below the amount set forth in the adjusted schedule of basic rates for that fiscal year, the state participation level for that rate shall be further increased to the amount specified in the adjusted schedule of basic rates.

(e) (1) As used in this section, ''specialized care increment'' means an approved amount paid with state participation on behalf of an AFDC-FC child requiring specialized care to a home listed in subdivision (a) in addition to the basic rate. On the effective date of this section, the department shall continue and maintain the current ratesetting system for specialized care.

(2) Any county that, as of the effective date of this section, has in effect specialized care increments that have been approved by the department, shall continue to receive state participation for those payments.

(3) Any county that, as of the effective date of this section, has in effect specialized care increments that exceed the amounts that have been approved by the department, shall continue to receive the same

level of state participation as it received on the effective date of this section.

(4) (A) Except for subparagraph (B), beginning January 1, 1990, specialized care increments shall be adjusted in accordance with the methodology for the schedule of basic rates described in subdivision (c) and (d). No county shall receive state participation for any increases in a specialized care increment which exceeds the adjustments made in accordance with this methodology.

(B) Notwithstanding subdivision (e) of Section 11460, for the 1993–94 fiscal year, an amount equal to 5 percent of the State Treasury appropriation for family homes shall be added to the total augmentation for the AFDC-FC program in order to provide incentives and assistance to counties in the area of specialized care. This appropriation shall be used, but not limited to, encouraging counties to implement or expand specialized care payment systems, to recruit and train foster parents for the placement of children with specialized care needs, and to develop county systems to encourage the placement of children in family homes. It is the intent of the Legislature that in the use of these funds, federal financial participation shall be claimed whenever possible.

(f) (1) As used in this section, ''clothing allowance'' means the amount paid with state participation in addition to the basic rate for the provision of additional clothing for an AFDC-FC child, including, but not limited to, an initial supply of clothing and school or other uniforms.

(2) Any county that, as of the effective date of this section, has in effect clothing allowances, shall continue to receive the same level as it received on the effective date of this section.

(3) Beginning January 1, 1990, except as provided in paragraph (4), clothing allowances shall be adjusted annually in accordance with the methodology for the schedule of basic rates described in subdivision (c) and (d). No county shall be reimbursed for any increases in clothing allowances which exceed the adjustments made in accordance with this methodology.

(4) For the 2000–01 fiscal year and each fiscal year thereafter, without a county share of cost, notwithstanding subdivision (c) of Section 15200, each child shall be entitled to receive a supplemental clothing allowance of one hundred dollars ($100) per year subject to the availability of funds. The clothing allowance shall be used to supplement, and not supplant, the clothing allowance specified in paragraph (1).

SEC. 18. Section 16504.5 of the Welfare and Institutions Code is amended to read:

16504.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (b) of Section 11105 of the Penal Code, a child welfare agency may secure from an appropriate governmental agency the state

summary criminal history information, as defined in subdivision (a) of Section 11105 of the Penal Code, through the California Law Enforcement Telecommunications System for the following purposes:

(1) To conduct an investigation pursuant to Section 11166.3 of the Penal Code or an investigation involving a child in which the child is alleged to come within the jurisdiction of the juvenile court under Section 300.

(2) To assess the appropriateness and safety of placing a child who has been detained or is a dependent of the court, in the approved home of a relative pursuant to Section 309 or 361.4, or the approved home of a nonrelative extended family member as described in Section 362.7.

(3) To attempt to locate a parent or guardian pursuant to Section 311 of a child who is the subject of dependency court proceedings.

(b) Any time that a child welfare agency initiates a criminal background check through the California Law Enforcement Telecommunications System, the agency shall ensure that a fingerprint check is initiated within five judicial days of the check, unless the whereabouts of the subject of the check are unknown or the subject of the check refuses to submit to the fingerprint check. The Department of Justice shall provide the requesting agency a copy of all criminal history information regarding an individual that it maintains pursuant to subdivision (b) of Section 11105 of the Penal Code.

(c) Law enforcement personnel shall cooperate with requests for criminal history information authorized pursuant to this section and shall provide the information to the requesting entity in a timely manner.

(d) Any law enforcement officer or person authorized by this section to receive the information who obtains the information in the record and knowingly provides the information to a person not authorized by law to receive the information is guilty of a misdemeanor as specified in Section 11142 of the Penal Code.

(e) Information obtained pursuant to this section shall not be used for any purposes other than those described in subdivision (a).

(f) Nothing in this section shall preclude a relative or other person living in a relative's home from refuting any of the information obtained by law enforcement if the individual believes the criminal records check revealed erroneous information.

SEC. 19. Section 16507.5 of the Welfare and Institutions Code is amended to read:

16507.5. (a) When a minor is separated or is in the process of being separated from the minor's family under the provisions of a voluntary placement agreement, the county welfare department or a licensed private or public adoption agency social worker shall make any and all reasonable and necessary provisions for the care, supervision, custody,

conduct, maintenance, and support of the minor, including medical treatment.

Responsibility for placement and care of the minor shall be with the social worker who may place the minor in any of the following:

(1) The approved home of a relative or the approved home of a nonrelative extended family member as described in Section 362.7.

(2) A suitable licensed community care facility.

(3) With a foster family agency to be placed in a suitable licensed home or other family home which has been certified by the agency as meeting licensing standards.

(4) A home or facility in accordance with the federal Indian Child Welfare Act.

(b) The granting of a community care license or approval status does not entitle the caregiver to the placement of a specific child or children. Placement is based on the child's needs and best interests.

SEC. 20. Section 16518 of the Welfare and Institutions Code is amended to read:

16518. The State Department of Social Services, in consultation with county placement agencies, foster care providers, and other interested community parties, shall establish criteria to be used for conducting a comprehensive home study of a licensed or foster parent that evaluates the ability, readiness, and willingness of the licensed foster parent to meet the varying needs of children, including, but not limited to, hard-to-place children. The department shall consult with the Task Force on Accreditation of Services for Children established pursuant to Section 1565 of the Health and Safety Code, and shall, as appropriate, consider the accreditation standards that are included in the accreditation plan when developing the home study criteria. The home study criteria developed pursuant to this section shall become operative at such time as the regulations adopted pursuant to Section 1521.6 of the Health and Safety Code are filed with the Secretary of State.

SEC. 21. Notwithstanding the 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, on and before June 30, 2002, the State Department of Social Services may implement the applicable provisions of this act through all county letters or similar instructions from the director.

The director shall adopt regulations, as otherwise necessary, to implement the applicable provisions of this act no later than July 1, 2002. Emergency regulations to implement the applicable provisions of this act may be adopted by the director in accordance with the Administrative Procedures Act.

SEC. 22. 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.

SEC. 23. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify in statute that the state is in compliance with the federal Adoptions and Safe Families Act of 1997 and entitled to continue claiming foster care administrative and maintenance payments under Title IV-E of the Social Security Act for relatives and nonrelative extended family member placements, it is necessary that this act take effect immediately.

CHAPTER 654

An act to amend Section 19325 of, and to add Section 19325.1 to, the Education Code, relating to the State Library, and making an appropriation therefor.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

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

(a) Thousands of California citizens have disabilities that prevent them from directly accessing conventional print material due to visual impairments, dyslexia, and orthopedic disabilities, which prevent the physical manipulation of print materials.

(b) For decades there have been governmental and nonprofit organizations dedicated to providing access to reading materials on a wide variety of subjects by way of Braille, large print, or audio tape recordings.

(c) Access to time-sensitive or local or regional publications, or both, is not feasible to produce through these traditional means and formats.

(d) Lack of direct and prompt access to these materials, such as newspapers, magazines, newsletters, broadcast media schedules, and other time-sensitive materials has a detrimental effect on the educational

opportunities, literacy, and opportunity for full participation in governmental and community forums by people with print disabilities.

(e) The California State Library, through the leadership of State Librarian Dr. Kevin Starr, has caused to be established in five locations throughout California high technology systems that provide access to previously inaccessible material by use of a standard telephone.

(f) These telephonic reading systems are currently underutilized because they are capable of serving many more people than can call without incurring long distance telephone charges.

(g) It is not cost-effective to establish the hundreds of locations necessary to give print disabled Californians local telephone call access to those locations.

(h) Toll-free access to current and future telephonic reading systems operated by governmental or nonprofit organizations in California will provide meaningful access to this important print material for all Californians with print disabilities.

SEC. 2. This bill may be known and shall be cited as the Kevin Starr Access to Information Act of 2001.

SEC. 3. Section 19325 of the Education Code is amended to read:

19325. The State Librarian may provide the following:

(a) Toll-free telephone services for registered patrons of the federally designated regional libraries for the blind and physically handicapped, in order to enable those persons to have direct patron access to library services.

(b) Toll-free telephone access to telephonic reading systems for individuals with print disabilities who are registered patrons of the federally designated regional libraries for the blind and physically handicapped.

SEC. 4. Section 19325.1 is added to the Education Code, to read:

19325.1. (a) The State Librarian may operate a telephonic reading system, fund the operation of telephonic reading systems operated by qualifying entities, or both.

(b) As used in this section, the following terms have the following meanings, unless otherwise indicated:

(1) ''Telephonic reading system'' means a system operated by the State Librarian or a qualifying entity, whereby a caller can hear the reading of material such as newspapers, magazines, newsletters, broadcast media schedules, transit route and schedule information, and other reference or time-sensitive materials, as determined by the operator of the system.

(2) ''Qualifying entity'' means any agency, instrumentality, or political subdivision of the state or any nonprofit organization whose primary mission is to provide services to people who are blind or visually impaired.

(c) Qualifying entities that were eligible, as of January 1, 2001, to receive funds from the State Librarian relating to the operation of a telephonic reading system may continue to receive funding from the State Librarian.

(d) The State Librarian, in cooperation with qualifying entities, may expand the type and scope of materials available on telephonic reading systems in order to meet the local, regional, or foreign language needs of print-disabled residents of this state. The State Librarian may also expand the scope of services and availability of telephonic reading services by current methods and technologies or by methods and technologies that may be developed. The State Librarian may inform current and potential patrons of the availability of telephonic reading service through appropriate means, including, but not limited to, direct mailings, direct telephonic contact, and public service announcements.

(f) The State Librarian may enter into contracts or other agreements that he or she determines to be appropriate to provide telephonic reading services pursuant to this section.

SEC. 5. The sum of eight hundred thirty thousand dollars ($830,000) is hereby appropriated from the California Teleconnect Fund Administrative Committee Fund to the California State Library to fund the seven existing telephonic reading centers in Los Angeles, San Diego, Fresno, San Francisco, and Sacramento until July 1, 2002. Any funds appropriated to the California State Library pursuant to this section, which are not encumbered on or before July 1, 2002, shall revert to the California Teleconnect Fund Administrative Committee Fund.

CHAPTER 655

An act to add Section 14115.8 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. It is the intent of the Legislature that the gap in per student recovery for medicaid reimbursements for services by local education agencies between California and the three states recovering the most per student from the federal government be reduced as rapidly as possible. In order to accomplish this intent, the Legislature finds that the activities of the State Department of Health Services, required by this act, are a state priority. Accordingly, to accomplish all of the tasks

required by this act it is recognized that additional staff, contract or otherwise, may be needed initially. Nothing in this act shall be interpreted to affect the Medi-Cal Administrative Activities program.

SEC. 2. Section 14115.8 is added to the Welfare and Institutions Code, to read:

14115.8. (a) (1) The department shall amend the medicaid state plan with respect to the billing option for services by local education agencies, to ensure that schools shall be reimbursed for all eligible services that they provide that are not precluded by federal requirements.

(2) The department shall examine methodologies for increasing school participation in the Medi-Cal billing option for local education agencies so that schools can meet the health care needs of their students.

(3) The department, to the extent possible shall simplify claiming processes for local education agency billing.

(4) The department shall eliminate and modify state plan and regulatory requirements that exceed federal requirements when they are unnecessary.

(b) If a rate study for the LEA Medi-Cal billing option is completed pursuant to Section 52 of Chapter 171 of the Statutes of 2001, the department, in consultation with the entities named in subdivision (c), shall implement the recommendations from the study, to the extent feasible and appropriate.

(c) In order to assist the department in formulating the state plan amendments required by subdivisions (a) and (b), the department shall regularly consult with the State Department of Education, representatives of urban, rural, large and small school districts, and county offices of education, the local education consortium, local education agencies, and the local education agency technical assistance project. It is the intent of the Legislature that the department also consult with staff from Region IX of the federal Centers for Medicare and Medicaid Services, experts from the fields of both health and education, and state legislative staff.

(d) Notwithstanding any other provision of law, or any other contrary state requirement, the department shall take whatever action is necessary to ensure that, to the extent there is capacity in its certified match, a local education agency shall be reimbursed retroactively for the maximum period allowed by the federal government for any department change that results in an increase in reimbursement to local education agency providers.

(e) The department may undertake all necessary activities to recoup matching funds from the federal government for reimbursable services that have already been provided in the state's public schools. The department shall prepare and take whatever action is necessary to

implement all regulations, policies, state plan amendments, and other requirements necessary to achieve this purpose.

(f) The department shall file an annual report with the Legislature that shall include at least all of the following:

(1) A copy of the annual comparison required by subdivision (i).

(2) A state-by-state comparison of school-based medicaid total and per eligible child claims and federal revenues. The comparison shall include a review of the most recent two years for which completed data is available.

(3) A summary of department activities and an explanation of how each activity contributed toward narrowing the gap between California's per eligible student federal fund recovery and the per student recovery of the top three states.

(4) A listing of all school-based services, activities, and providers approved for reimbursement by the federal Centers for Medicare and Medicaid Services in other state plans that are not yet approved for reimbursement in California's state plan and the service unit rates approved for reimbursement.

(5) The official recommendations made to the department by the entities named in subdivision (c) and the action taken by the department regarding each recommendation.

(6) A one-year timetable for state plan amendments and other actions necessary to obtain reimbursement for those items listed in paragraph (4).

(7) Identify any barriers to local education agency reimbursement, including those specified by the entities named in subdivision (c), that are not imposed by federal requirements, and describe the actions that have been, and will be, taken to eliminate them.

(g) (1) These activities shall be funded and staffed by proportionately reducing federal Medi-Cal payments allocable to local educational agencies for the provision of benefits funded by the federal Medi-Cal program under the billing option for services by local educational agencies specified in this section. Moneys collected as a result of the reduction in federal Medi-Cal payments allocable to local educational agencies shall be deposited into the Local Education Agency Medi-Cal Recovery Account, which is hereby established in the Special Deposit Fund established pursuant to Section 16370 of the Government Code. These funds shall be used only to support the department to meet all the requirements of this section. As of January 1, 2006, unless the Legislature enacts a new statute or extends the date beyond January 1, 2006, all funds in the Local Education Agency Medi-Cal Recovery Account shall be returned proportionally to all local educational agencies whose federal Medi-Cal funds were used to create this account.

The annual amount funded shall not exceed one million five hundred thousand dollars ($1,500,000).

(2) Commencing with the 2003–04 fiscal year, funding received pursuant to paragraph (1) shall derive only from federal medicaid funds that exceed the baseline amount of local educational agency medicaid billing option revenues for the 2000–01 fiscal year.

(h) (1) The department may enter into a sole source contract to comply with the requirements of this section.

(2) The level of additional staff to comply with the requirements of this section, including, but not limited to, staff for which the department has contracted for pursuant to paragraph (1), shall be limited to that level that can be funded with revenues derived pursuant to subdivision (g).

(i) The activities of the department shall include all of the following:

(1) An annual comparison of the school-based medicaid systems in comparable states.

(2) Efforts to improve communications with the federal government, the State Department of Education, and local education agencies.

(3) The development and updating of written guidelines to local education agencies regarding best practices to avoid audit exceptions, as needed.

(4) The establishment and maintenance of a local education agency friendly interactive Web site.

(j) Subdivisions (e) to (i), inclusive, shall become inoperative on January 1, 2006.

CHAPTER 656

An act to amend Section 25212 of, and to add Article 10.2 (commencing with Section 25214.5) to Chapter 6.5 of Division 20 of, the Health and Safety Code, and to amend the heading of Division 12.2 (commencing with Section 15000) of, to amend Section 42175.1 of, to add Chapter 5 (commencing with Section 15025) to Division 12.2 of, and to repeal Section 42176 of, the Public Resources Code, relating to mercury.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. This act shall be known and may be cited as the California Mercury Reduction Act of 2001.

SEC. 2. The Legislature finds and declares all of the following:

(a) Mercury is a persistent and toxic pollutant that bioaccumulates in the environment and in the food chain.

(b) Due to the bioaccumulation of mercury and other contaminants in fish, the California Environmental Protection Agency has issued a warning advising that adults and women who are pregnant or who may become pregnant should limit their fish intake from several state waterways.

(c) Increasingly stringent mercury discharge limits for wastewater treatment plants make identification and elimination of unnecessary sources of mercury a critical task where the cost of mercury removal at a wastewater treatment plant is far greater than the societal benefits of continuing use of those products as currently formulated.

(d) The mercury in one fever thermometer is enough to contaminate more than 200 million gallons of water.

(e) There are accurate and safe alternatives to mercury fever thermometers that are readily available and comparable in cost.

(f) Each year, fever thermometers containing an estimated 17 tons of mercury are discarded to municipal solid waste in the United States.

(g) An estimated 130 to 180 tons of mercury are in the hood and trunk switches of automobiles currently in use or at automotive recycling yards throughout the United States.

(h) Mercury from consumer products can enter the environment, and ultimately the state's waterways, directly through vaporization or spillage when broken during use, transportation, or disposal.

(i) Any person or business engaged in the dismantling or crushing of motor vehicles is encouraged to remove mercury-containing motor vehicle light switches that are mounted on the hood or trunk of the vehicle, including any housing of the switch.

SEC. 3. Section 25212 of the Health and Safety Code is amended to read:

25212. (a) Any person who, pursuant to Section 42175 of the Public Resources Code, removes from a major appliance any material that requires special handling, that is a hazardous waste under this chapter, is a hazardous waste generator and shall comply with all provisions of this chapter applicable to generators of hazardous waste.

(b) All materials that require special handling that have been removed from a major appliance pursuant to Section 42175 of the Public Resources Code, and that are hazardous wastes, shall be managed in accordance with this chapter.

(c) Any person who fails to comply with the requirements of Section 42175 of the Public Resources Code is in violation of this chapter.

(d) (1) The department or a local health officer or other public officer authorized pursuant to Article 8 (commencing with Section 25180), including, when applicable, a certified unified program agency (CUPA)

or a unified program agency within the jurisdiction of a CUPA, shall incorporate both of the following into the existing inspection and enforcement activities of the department or the local health officer or other public officer:

(A) The regulation of materials that require special handling that, when removed from a major appliance, is hazardous waste.

(B) The enforcement of the requirements of Section 42175 of the Public Resources Code.

(2) The department, local health officers, or other public officers shall coordinate their activities as needed to identify and regulate materials that require special handling that, when removed from major appliances, are hazardous wastes that are transported from one jurisdiction to another.

SEC. 4. Article 10.2 (commencing with Section 25214.5) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.2. Motor Vehicle Switches

25214.5. For purposes of this article, ''mercury-containing motor vehicle light switch'' means any motor vehicle light switch found in the hood or trunk of a motor vehicle that contains mercury.

25214.6. Any mercury-containing motor vehicle light switch removed from a motor vehicle is subject to Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations, and any other applicable regulation adopted by the department pursuant to this chapter, including, but not limited to, standards for the handling of hazardous waste, standards for destination facilities, requirements for the tracking of universal waste shipments, import requirements, and the regulations governing different products.

25214.7. The department shall do all of the following:

(a) Coordinate with local agencies to provide technical assistance to businesses engaged in the dismantling or crushing of motor vehicles concerning the safe removal and proper disposal of mercury-containing light switches from motor vehicles, including information about vehicle makes and models that contain mercury light switches and entities that provide mercury recycling services.

(b) Coordinate and encourage entities, such as associations representing motor vehicle repair shops, to offer to the public the replacement and recycling of mercury-containing motor vehicle light switches.

(c) Make available to the public information concerning services to replace and recycle mercury-containing motor vehicle light switches.

25214.8. On or before January 1, 2004, the department shall report to the appropriate policy and fiscal committees of the Legislature on both of the following:

(a) The success of efforts to remove mercury-containing vehicle light switches from vehicles pursuant to Section 25214.6.

(b) Compliance with the requirement to remove mercury-containing appliance switches pursuant to Section 42175 of the Public Resources Code.

SEC. 5. The heading of Division 12.2 (commencing with Section 15000) of the Public Resources Code is amended to read:

DIVISION 12.2. PRODUCTS CONTAINING TOXIC METALS

SEC. 6. Chapter 5 (commencing with Section 15025) is added to Division 12.2 of the Public Resources Code, to read:

CHAPTER 5. CONSUMER PRODUCTS CONTAINING MERCURY

15025. For purposes of this article, the following terms have the following meanings:

(a) ''Mercury-added novelty'' means a mercury-added product intended mainly for personal or household enjoyment or adornment. A ''mercury-added novelty'' includes, but is not limited to, any item intended for use as a practical joke, figurine, adornment, toy, game, card, ornament, yard statue or figure, candle, jewelry, holiday decoration, and item of apparel, including footwear.

(b) ''Mercury fever thermometer'' means a mercury-added product that is used for measuring body temperature. Mercury fever thermometer does not include a digital thermometer that uses mercuric oxide button cell batteries.

(c) ''School'' means any school used for the purpose of the education of more than 12 children in kindergarten or any of grades 1 to 12, inclusive.

15026. (a) On and after July 1, 2002, no person, other than a person licensed pursuant to Article 9 (commencing with Section 4140) of Chapter 9 of Division 2 of the Business and Professions Code, may sell at retail, or otherwise supply, a mercury fever thermometer to a consumer or patient in this state. A mercury fever thermometer may be sold at retail, or otherwise supplied to a consumer or patient only upon the prescription of a physician, dentist, veterinarian, or podiatrist. A mercury fever thermometer sold at retail shall be accompanied by clear written instructions concerning careful handling to avoid breakage and proper cleanup should breakage occur.

(b) A violation of subdivision (a) is a violation of the requirements of Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code and the California State Board of Pharmacy shall enforce the requirements of subdivision (a) in accordance with Chapter 9.

15027. (a) On and after January 1, 2003, no person shall manufacture, offer for final sale or use, or distribute for promotional purposes in this state, a mercury-added novelty, if the manufacturer, seller, or distributor knows, or has reason to know, that the product contains mercury. A person who manufactures or distributes any mercury-added novelty shall notify each retailer regarding the requirements of this section and how to dispose of the remaining inventory in accordance with Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(b) A violation of subdivision (a) is a violation of Article 2 (commencing with Section 108550) of Chapter 5 of Part 3 of Division 104 of the Health and Safety Code and, for purposes of that article, ''mercury-added novelties'' shall be deemed to be toys. The State Department of Health Services may take action against mercury-added novelties in the same manner as it is authorized to take action against toys, except that a violation of subdivision (a) is a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000) for each violation, or by imprisonment in the county jail for a period not to exceed one year, or by both that fine and imprisonment.

15028. No school in this state shall purchase, for use in the classroom, elemental mercury, mercury compounds, or mercury-added laboratory measurement devices, chemicals, and related materials, except measuring devices used in school laboratories for which the school district determines no adequate substitute exists.

15029. No person may sell or offer for sale in this state a vehicle manufactured on or after January 1, 2005, that contains a mercury-containing motor vehicle light switch, as defined in Section 25214.5 of the Health and Safety Code, mounted on the hood or trunk.

SEC. 7. Section 42175.1 of the Public Resources Code is amended to read:

42175.1. (a) Any hazardous material that becomes a hazardous waste when released or removed from any major appliance shall be managed pursuant to Article 10.1 (commencing with Section 25211) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(b) Any mercury-containing motor vehicle light switch that becomes a hazardous waste when released or removed from any vehicle shall be managed pursuant to Article 10.2 (commencing with Section 25214.5) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(c) Failure to comply with the requirements of Section 42175 is a violation of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

SEC. 8. Section 42176 of the Public Resources Code is repealed.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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.

CHAPTER 657

An act to amend Section 23401.2 of, and to repeal and add Section 23100 of, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 23100 of the Business and Professions Code is repealed.

SEC. 2. Section 23100 is added to the Business and Professions Code, to read:

23100. Any person in possession of a stock of lawfully acquired alcoholic beverages following the revocation of, suspension of, voluntary surrender of, or failure to renew, the license may sell the stock, under supervision of the department in the manner as the department by rule provides, to licensees authorized to sell the alcoholic beverages.

SEC. 3. Section 23104.2 of the Business and Professions Code is amended to read:

23104.2. (a) Subject to the exceptions specified in subdivision (b), a retail licensee may return beer to the wholesaler or manufacturer from whom the retail licensee purchased the beer, or any successor thereto, and the wholesaler, manufacturer, or successor thereto may accept that return if the beer is returned in exchange for the identical quantity and brand of beer. No wholesaler or manufacturer, or any successor thereto, shall accept the return of any beer from a retail licensee except when the beer delivered was not the brand or size container ordered by the retail

licensee or the amount delivered was other than the amount ordered, in which case the order may be corrected by the wholesaler or manufacturer who sold the beer, or any successor thereto. If a package had been broken or otherwise damaged prior to or at the time of actual delivery, a credit memorandum may be issued for the returned package by the wholesaler or manufacturer who sold the beer, or any successor thereto, in lieu of exchange for an identical package when the return and corrections are completed within 15 days from the date the beer was delivered to the retail licensee.

(b) Notwithstanding subdivision (a), a wholesaler or manufacturer, or any successor thereto, may accept the return of beer purchased from that wholesaler, manufacturer, or successor thereto, as follows:

(1) (A) From a seasonal or temporary licensee if at the termination of the period of the license the seasonal or temporary licensee has beer remaining unsold, or from an annual licensee operating on a temporary basis if at the termination of the temporary period the annual licensee has beer remaining unsold.

(B) For purposes of subparagraph (A), an annual licensee shall be considered to be operating on a temporary basis if he or she operates at seasonal resorts, including summer and winter resorts, or at sporting or entertainment facilities, including racetracks, arenas, concert halls, and convention centers. Temporary status shall be deemed terminated when operations cease for 15 days or more. No wholesaler or manufacturer, or successor thereto, shall accept the return of beer from an annual licensee considered to be operating on a temporary basis unless the licensee notifies that wholesaler or manufacturer, or successor thereto, within 15 days of the date the licensee's operations ceased.

(2) (A) Subject to subparagraph (B), a wholesaler or manufacturer, or any successor thereto, may, with department approval, accept the return of a brand of beer discontinued in a California market area or a seasonal brand of beer from a retail licensee, provided that the beer is exchanged for a quantity of beer of a brand produced or sold by the same manufacturer with a value no greater than the original sales price to the retail licensee of the returned beer. For purposes of this subparagraph, ''seasonal brand of beer'' means a brand of beer, as defined in Section 23006, that is brewed by a manufacturer to commemorate a specific holiday season and is so identified by appropriate product packaging and labeling.

(B) A discontinued brand of beer may not be reintroduced for a period of 12 months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place. A seasonal brand of beer may not be reintroduced for a period of six months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place.

(c) Notwithstanding subdivision (a), a wholesaler or manufacturer, or any successor thereto, may accept the return of beer purchased from that wholesaler or manufacturer, or any successor thereto, by the holder of a retail license following the revocation of, suspension of, voluntary surrender of, or failure to renew the retail license.

(d) A wholesaler or manufacturer, or any successor thereto, may credit the account of the retailer identified in subdivision (c) in an amount not to exceed the original sales price to the retailer of the returned beer, provided that the beer has been paid for in full.

CHAPTER 658

An act to amend Sections 12804.9, 14100, and 35400 of, and to add Sections 2429.3, 12804.10, and 12804.15 to, the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 2429.3 is added to the Vehicle Code, to read:

2429.3. (a) The commissioner shall appoint a committee of 12 members to develop a public awareness and outreach campaign to educate manufacturers, sellers, and owners of house cars, as described in subdivision (b) of Section 12804.10, regarding locations where those vehicles may be legally operated within the state. The committee shall consist of the commissioner, two members representing owners or operators of house cars, and one representative from each of the following:

(1) The Department of Transportation.
(2) The Department of Motor Vehicles.
(3) The Recreational Vehicle Industry Association.
(4) The California Recreational Vehicle Dealers Association.
(5) The National Recreational Vehicle Dealers Association.
(6) The Family Motor Coach Association.
(7) The Good Sam Club.
(8) The recreational vehicle manufacturing industry.
(9) The California Travel Parks Association.

(b) The committee shall develop a driver education safety video for operators of house cars. The video, as well as a map of the approved highways on which those vehicles may operate, shall be made available

to dealers of house cars. The committee shall encourage dealers to make copies of the video and map available to purchasers of those vehicles. The video shall be produced at no cost to the state.

(c) Committee members shall serve at the pleasure of the commissioner and without compensation.

SEC. 2. Section 12804.9 of the Vehicle Code, as amended by Section 16 of Chapter 1035 of the Statutes of 2000, is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination for any applicant who submits a license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico if the department verifies through any acknowledged national driver record data source that there are no stops, holds, or other impediments to its issuance. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any grounds exist for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a health care professional. As used in this subdivision, ''health care professional'' means a person who is licensed, certified, or registered in accordance with applicable state laws and regulations to practice medicine and perform physical examinations in the United States of

America. Health care professionals are doctors of medicine, doctors of osteopathy, physician assistants, and advanced practice nurses, or doctors of chiropractic who are clinically competent to perform the medical examination presently required of motor carrier drivers by the Federal Highway Administration. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) Any combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) Any vehicle towing more than one vehicle.

(C) Any trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) Any single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) Any single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) Any bus except a trailer bus.

(D) Any farm labor vehicle.

(E) Any single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) Any house car over 40 feet in length, excluding safety devices and safety bumpers.

(G) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) Any two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) Any house car of 40 feet in length or less.

(D) Any three-axle vehicle weighing 6,000 pounds or less gross.

(E) Any house car of 40 feet in length or less or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. No vehicle shall tow another vehicle in violation of Section 21715.

(F) (i) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway.

The authority to operate combinations of vehicles under this subparagraph shall be granted by endorsement on a class C license upon completion of that written examination.

(G) Any vehicle or combination of vehicles with a gross combination weight rating or a gross vehicle weight rating, as those terms are defined in subdivisions (g) and (h), respectively, of Section 15210, of 26,000 pounds or less, if all of the following conditions are met:

(i) Is operated by a farmer, an employee of a farmer, or an instructor credentialed in agriculture as part of an instructional program in agriculture at the high school, community college, or university level.

(ii) Is used exclusively in the conduct of agricultural operations.

(iii) Is not used in the capacity of a for-hire carrier or for compensation.

(H) Any motor vehicle over 4,000 pounds unladen when towing a boat trailer with a gross combination weight rating, as defined in subdivision (g) of Section 15210, of 26,000 pounds or less under the following conditions:

(i) The combination of vehicles is used to transport a boat for recreational purposes or to and from a place of repair.

(ii) The combination of vehicles is not used in the operations of a common or contract carrier or in the course of any business endeavor.

(iii) The towing of the trailer is not for compensation.

(iv) The combination of vehicles and its load are not of a size that requires a permit pursuant to Section 35780.

(I) Class C does not include any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class M1. Any two-wheel motorcycle or motor-driven cycle. Authority to operate vehicles included in a class M1 license may be

granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. Any motorized bicycle or moped, or any bicycle with an attached motor, except a motorized bicycle described in subdivision (b) of Section 406 and a motorized scooter described in Section 407.5. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) No driver's license or driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, that has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise, the license shall be valid only for operating class C vehicles that are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, that are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination requirements for the license for which he or she is applying. The department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this paragraph, ''short-term'' means 48 hours or less.

(i) No person under the age of 21 years shall be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(j) Drivers of vanpool vehicles may operate with class C licenses but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit-and-run offense in the last five years.

(k) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(*l*) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 2.5. Section 12804.9 of the Vehicle Code, as added by Section 16.5 of Chapter 1035 of the Statutes of 2000, is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination for any applicant who submits a license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico if the department verifies through any acknowledged national driver record data source that there are no stops, holds, or other impediments to its issuance. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any grounds exist for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a health care professional. As used in this subdivision, ''health care professional'' means a person who is licensed, certified, or registered in accordance with applicable state laws and regulations to practice medicine and perform physical examinations in the United States of America. Health care professionals are doctors of medicine, doctors of osteopathy, physician assistants, and advanced practice nurses, or doctors of chiropractic who are clinically competent to perform the medical examination presently required of motor carrier drivers by the Federal Highway Administration. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) In accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination

appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) Any combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) Any vehicle towing more than one vehicle.

(C) Any trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) Any single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) Any single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) Any bus except a trailer bus.

(D) Any farm labor vehicle.

(E) Any single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) Any house car over 40 feet in length, excluding safety devices and safety bumpers.

(G) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) Any two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) Any house car of 40 feet in length or less.

(D) Any three-axle vehicle weighing 6,000 pounds or less gross.

(E) Any house car of 40 feet in length or less or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. No vehicle shall tow another vehicle in violation of Section 21715.

(F) (i) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating

to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway.

The authority to operate combinations of vehicles under this subparagraph shall be granted by endorsement on a class C license upon completion of that written examination.

(G) Any vehicle or combination of vehicles with a gross combination weight rating or a gross vehicle weight rating, as those terms are defined in subdivisions (g) and (h), respectively, of Section 15210, of 26,000 pounds or less, if all of the following conditions are met:

(i) Is operated by a farmer, an employee of a farmer, or an instructor credentialed in agriculture as part of an instructional program in agriculture at the high school, community college, or university level.

(ii) Is used exclusively in the conduct of agricultural operations.

(iii) Is not used in the capacity of a for-hire carrier or for compensation.

(H) Class C does not include any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class M1. Any two-wheel motorcycle or motor-driven cycle. Authority to operate vehicles included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. Any motorized bicycle or moped, or any bicycle with an attached motor, except a motorized bicycle described in subdivision (b) of Section 406 and a motorized scooter described in Section 407.5. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) No driver's license or driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, that has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise, the license shall be valid only for operating class C vehicles that are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, that are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination requirements for the license for which he or she is applying. The department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this paragraph, ''short-term'' means 48 hours or less.

(i) No person under the age of 21 years shall be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(j) Drivers of vanpool vehicles may operate with class C licenses but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit-and-run offense in the last five years.

(k) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(*l*) This section shall become operative on January 1, 2004.

SEC. 3. Section 12804.10 is added to the Vehicle Code, to read:

12804.10. (a) Notwithstanding any other provision of law, a person issued a class C license under paragraph (3) of subdivision (b) of Section 12804.9 may drive any house car of 40 feet in length or less without obtaining a noncommercial class B driver's license with house car endorsement as described in subdivision (b).

(b) Any person seeking to drive any house car over 40 feet in length, excluding safety devices and safety bumpers, shall obtain a noncommercial class B driver's license with house car endorsement as described in this subdivision. The applicant for that endorsement shall pass a specialized written examination and demonstrate the ability to exercise ordinary and reasonable control in operating that vehicle by driving it under the supervision of an examining officer. Upon satisfactory completion of the examination and demonstration, the applicant shall be issued a noncommercial class B driver's license with house car endorsement by the department. Upon application for an endorsement to operate this vehicle, and every two years thereafter, the applicant shall submit medical information on a form approved by the department.

SEC. 4. Section 12804.15 is added to the Vehicle Code, to read:

12804.15. (a) Notwithstanding Section 362, for purposes of this section ''house car'' means a vehicle described in subdivision (b) of Section 12804.10.

(b) (1) Except as provided under paragraph (2), no person may operate a house car unless that person has in his or her possession a valid driver's license of the appropriate class and an endorsement thereto issued by the department to permit operation of the house car.

(2) A nonresident may not operate a house car in this state unless that person is in possession of an out-of-state driver's license authorizing the operation of that vehicle.

(c) An endorsement to drive a house car may be issued only if the applicant meets all of the following conditions:

(1) The applicant successfully completes an examination prescribed by the department to determine qualification for the endorsement.

(2) Upon initial application and every two years thereafter, the applicant submits medical information on a form approved by the department to verify that the person meets the minimum medical requirements established by the department for operation of a house car.

(3) Upon application for issuance of an original driver's license or renewal driver's license pursuant to subdivision (b) of Section 12804.10, there shall be paid to the department a fee of thirty-four dollars ($34) for a license that will expire on the applicant's fifth birthday following the date of the application.

(d) The department may deny, suspend, or revoke an endorsement to drive a house car when the applicant does not meet any requirement for the issuance or retention of the endorsement.

SEC. 5. Section 14100 of the Vehicle Code is amended to read:

14100. (a) Whenever the department has given notice, or has taken or proposes to take action under Section 12804.15, 13353, 13353.2, 13950, 13951, 13952, or 13953, the person receiving the notice or subject to the action may, within 10 days, demand a hearing which shall be granted, except as provided in Section 14101.

(b) An application for a hearing does not stay the action by the department for which the notice is given.

(c) The fact that a person has the right to request an administrative hearing within 10 days after receipt of the notice of the order of suspension under this section and Section 16070, and that the request is required to be made within 10 days in order to receive a determination prior to the effective date of the suspension shall be made prominent on the notice.

(d) The department shall make available notices, to accompany the notice provided pursuant to this section, that provide the information required pursuant to subdivision (c) in all non-English languages spoken by a substantial number of the public served by the department, and shall distribute the notices as it determines is appropriate.

(e) The department shall implement the provisions of subdivisions (c) and (d) as soon as practicable, but not later than January 1, 1994.

SEC. 6. Section 35400 of the Vehicle Code is amended to read:

35400. (a) No vehicle shall exceed a length of 40 feet.

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

(1) A vehicle used in a combination of vehicles when the excess length is caused by auxiliary parts, equipment, or machinery not used as space to carry any part of the load, except that the combination of vehicles shall not exceed the length provided for combination vehicles.

(2) A vehicle when the excess length is caused by any parts necessary to comply with the fender and mudguard regulations of this code.

(3) (A) An articulated bus or articulated trolley coach that does not exceed a length of 60 feet.

(B) An articulated bus or articulated trolley coach described in subparagraph (A) may be equipped with a folding device attached to the front of the bus or trolley if the device is designed and used exclusively for transporting bicycles. The device, including any bicycles transported

thereon, shall be mounted in a manner that does not materially affect efficiency or visibility of vehicle safety equipment, and shall not extend more than 36 inches from the front body of the bus or trolley coach when fully deployed. The handlebars of a bicycle that is transported on a device described in this subparagraph shall not extend more than 42 inches from the front of the bus.

(4) A semitrailer while being towed by a motortruck or truck tractor, if the distance from the kingpin to the rearmost axle of the semitrailer does not exceed 40 feet for semitrailers having two or more axles, or 38 feet for semitrailers having one axle if the semitrailer does not, exclusive of attachments, extend forward of the rear of the cab of the motortruck or truck tractor.

(5) A bus or house car when the excess length is caused by the projection of a front safety bumper or a rear safety bumper, or both. The safety bumper shall not cause the length of the vehicle to exceed the maximum legal limit by more than one foot in the front and one foot in the rear. For the purposes of this chapter, ''safety bumper'' means any device that is fitted on an existing bumper or which replaces the bumper and is constructed, treated, or manufactured to absorb energy upon impact.

(6) A bus when the excess length is caused by a device, located in front of the front axle, for lifting wheelchairs into the bus. That device shall not cause the length of the bus to be extended by more than 18 inches, inclusive of any front safety bumper.

(7) A bus when the excess length is caused by a device attached to the rear of the bus designed and used exclusively for the transporting of bicycles. This device may be up to 10 feet in length, if the device, along with any other device permitted pursuant to this section, does not cause the total length of the bus, including any device or load, to exceed 50 feet.

(8) A bus operated by a public agency or a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, used in transit system service, other than a schoolbus, when the excess length is caused by a folding device attached to the front of the bus which is designed and used exclusively for transporting bicycles. The device, including any bicycles transported thereon, shall be mounted in a manner that does not materially affect efficiency or visibility of vehicle safety equipment, and shall not extend more than 36 inches from the front body of the bus when fully deployed. The handlebars of a bicycle that is transported on a device described in this paragraph shall not extend more than 42 inches from the front of the bus. A device described in this paragraph may not be used on any bus which, exclusive of the device, exceeds 40 feet in length or on any bus having a device attached to the rear of the bus pursuant to paragraph (7).

(9) A bus of a length of up to 45 feet when operating on those highways specified in subdivision (a) of Section 35401.5. The Department of Transportation or local authorities, with respect to highways under their respective jurisdictions, shall not deny reasonable access to a bus of a length of up to 45 feet between the highways specified in subdivision (a) of Section 35401.5 and points of loading and unloading for motor carriers of passengers as required by the federal Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240).

(10) (A) A house car of a length of up to 45 feet when operating on the National System of Interstate and Defense Highways or when using those portions of federal aid primary system highways that have been qualified by the United States Secretary of Transportation for that use, or when using routes appropriately identified by the Department of Transportation or local authorities, with respect to highways under their respective jurisdictions.

(B) A house car described in subparagraph (A) may be operated on a highway that provides reasonable access to facilities for purposes limited to fuel, food, and lodging when that access is consistent with the safe operation of the vehicle and when the facility is within one road mile of identified points of ingress and egress to or from highways specified in subparagraph (A) for use by that vehicle.

(C) As used in this paragraph and paragraph (9), ''reasonable access'' means access substantially similar to that authorized for combinations of vehicles pursuant to subdivision (c) of Section 35401.5.

(D) Any access route established by a local authority pursuant to subdivision (d) of Section 35401.5 is open for access by a house car of a length of up to 45 feet. In addition, local authorities may establish a process whereby access to services by house cars of a length of up to 45 feet may be applied for upon a route not previously established as an access route. The denial of a request for access to services shall be only on the basis of safety and an engineering analysis of the proposed access route. In lieu of processing an access application, local authorities, with respect to highways under their jurisdiction, may provide signing, mapping, or a listing of highways, as necessary, to indicate the use of these specific routes by a house car of a length of up to 45 feet.

(c) The Legislature, by increasing the maximum permissible kingpin to rearmost axle distance to 40 feet effective January 1, 1987, as provided in paragraph (4) of subdivision (b), does not intend this action to be considered a precedent for any future increases in truck size and length limitations.

(d) Any transit bus equipped with a folding device installed on or after January 1, 1999, that is permitted under subparagraph (B) of paragraph

(3) of subdivision (b) or under paragraph (8) of subdivision (b) shall be additionally equipped with any of the following:

(1) An indicator light that is visible to the driver and is activated whenever the folding device is in an extended position.

(2) Any other device or mechanism that provides notice to the driver that the folding device is in an extended position.

(3) A mechanism that causes the folding device to retract automatically from an extended position.

(e) (1) No person shall improperly or unsafely mount a bicycle on a device described in subparagraph (B) of paragraph (3) of subdivision (b), or in paragraph (8) of subdivision (b).

(2) Notwithstanding subdivision (a) of Section 23114 or subdivision (a) of Section 24002 or any other provision of law, when a bicycle is improperly or unsafely loaded by a passenger onto a transit bus, the passenger, and not the driver, is liable for any violation of this code that is attributable to the improper or unlawful loading of the bicycle.

SEC. 7. The Commissioner of the California Highway Patrol shall report to the Legislature not later than February 1, 2003, and February 1, 2004, regarding the number of house cars, as described in subdivision (b) of Section 12804.10 of the Vehicle Code, that are involved in traffic collisions during the calendar year prior to the reporting date.

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.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow house cars of up to 45 feet in length to be operated on certain highways in accordance with the provisions of this act at the earliest pos2plsible time, it is necessary that this act take effect immediately.

CHAPTER 659

An act relating to public capital facilities.

[Approved by Governor October 9, 2001. Filed with
Secretary of State October 10, 2001.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The Breed Street Shul, which opened in 1915 in the Boyle Heights neighborhood of Los Angeles, was the home of the Congregation Talmud Torah, once the largest orthodox synagogue in Los Angeles.

(b) The Breed Street Shul is currently in disrepair and requires significant renovation and capital improvements in order to bring it into compliance with seismic and building standards, thereby making it available as a museum and community cultural and educational center for children and adults.

(c) Jewish and Latino groups throughout the community are working together to redevelop the Breed Street Shul, preserve its historical legacy and architectural integrity, and create a multipurpose center that responds to the needs of the dynamic area. These groups include the Jewish Historical Society of Southern California, which has acquired the shul, the Boyle Heights Neighbors Organization, the East Los Angeles Community Corporation, Impacto/El Proyecto de Pastoral, Self-Help Graphics, the University of California at Los Angeles School of Public Policy, the University of Southern California School of Architecture, the Jewish Community Relations Committee of the Jewish Federation of Greater Los Angeles, Hebrew Union College, and the Los Angeles Conservancy.

(d) Partial funding for the restoration effort has been made available through the California Endowment, the J. Paul Getty Trust, the National Trust for Historic Preservation-Save America's Treasures Planning Fund, and the Jewish Federation of Greater Los Angeles. The Federal Emergency Management Agency has also awarded partial funding to the Breed Street Shul for seismic retrofitting of the shul's unreinforced masonry building, but requires that matching funds be obtained.

(e) The Breed Street Shul is designated City of Los Angeles Historic-Cultural Monument Number 359, is designated as an Official Site of Save America's Treasures, and has been deemed eligible to be listed on the National Register of Historic Places.

(f) An appropriation of five hundred thousand dollars ($500,000) has been made to the Department of Parks and Recreation in the Budget Act of 2001 for a grant to the Breed Street Shul Project, Inc. to be used for renovation and capital improvements.

CHAPTER 660

An act to add Section 10176.1 to the Business and Professions Code, to add Section 17423.1 to the Financial Code, and to add Section 12414.31 to the Insurance Code, relating to escrow agents.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. The Legislature finds and declares that:

(a) The escrow industry in California is regulated by several different governmental agencies, depending on who is performing the escrow services, and it is of critical importance for the various regulatory agencies to cooperate with each other, and share information where it is in the public interest to coordinate regulatory action.

(b) It is of particular importance for the various regulators to cooperate when one regulator is taking action against a person for serious malfeasance or misconduct that is resulting in a suspension, restriction, revocation or other prohibition on the person's privilege to work in the escrow industry.

(c) There is a substantial governmental interest in ensuring that persons who are being restricted or barred from one sector of the escrow industry as a result of the harm to the public that they have caused are not able to easily shift to employment in another sector of the escrow industry.

(d) It is the purpose of this legislation to establish a mechanism to enable, and to affirmatively encourage the various regulators to cooperate with each other where enforcement action is being taken against a person employed in the escrow industry.

SEC. 2. Section 10176.1 is added to the Business and Professions Code, to read:

10176.1. (a) (1) Whenever the commissioner takes any enforcement or disciplinary action against a licensee, and the enforcement or disciplinary action is related to escrow services provided pursuant to paragraph (4) of subdivision (a) of Section 17006 of the Financial Code, upon the action becoming final the commissioner shall notify the Insurance Commissioner and the Commissioner of Corporations of the action or actions taken. The purpose of this notification is to alert the departments that enforcement or disciplinary action has been taken, if the licensee seek or obtains employment with entities regulated by the departments.

(2) The commissioner shall provide the Insurance Commissioner and the Commissioner of Corporations, in addition to the notification of the

action taken, with a copy of the written accusation, statement of issues, or order issued or filed in the matter and, at the request of the Insurance Commissioner or the Commissioner of Corporations, with any underlying factual material relevant to the enforcement or disciplinary action. Any confidential information provided by the commissioner to the Insurance Commissioner or the Commissioner of Corporations shall not be made public pursuant to this section. Notwithstanding any other provision of law, the disclosure of any underlying factual material to the Insurance Commissioner or the Commissioner of Corporations shall not operate as a waiver of confidentiality or any privilege that the commissioner may assert.

(b) The commissioner shall establish and maintain, on the Web site maintained by the Department of Real Estate, a database of its licensees, including those who have been subject to any enforcement or disciplinary action that triggers the notification requirements of this section. The database shall also contain a direct link to the databases, described in Section 17423.1 of the Financial Code and Section 12414.31 of the Insurance Code and required to be maintained on the Web sites of the Department of Corporations and the Department of Insurance, respectively, of persons who have been subject to enforcement or disciplinary action for malfeasance or misconduct related to the escrow industry by the Insurance Commissioner and the Commissioner of Corporations.

(c) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the Department of Real Estate, the Real Estate Commissioner, any other state agency, or any officer, agent, employee, consultant, or contractor of the state, for the release of any false or unauthorized information pursuant to this section, unless the release of that information was done with knowledge and malice, or for the failure to release any information pursuant to this section.

SEC. 3. Section 17423.1 is added to the Financial Code, to read:

17423.1. (a) (1) Whenever the commissioner takes any enforcement or disciplinary action pursuant to Section 17423, upon the action becoming final the commissioner shall notify the Real Estate Commissioner and the Insurance Commissioner of the action or actions taken. The purpose of this notification is to alert the departments that enforcement or disciplinary action has been taken, if the person seeks or obtains employment with entities regulated by the departments.

(2) The commissioner shall provide the Real Estate Commissioner and the Insurance Commissioner, in addition to the notification of the action taken, with a copy of the written accusation, statement of issues, or order issued or filed in the matter and, at the request of the Real Estate Commissioner or Insurance Commissioner, with any underlying factual

material relevant to the enforcement or disciplinary action. Any confidential information provided by the commissioner to the Insurance Commissioner or the Real Estate Commissioner shall not be made public pursuant to this section. Notwithstanding any other provision of law, the disclosure of any underlying factual material to the Insurance Commissioner or the Real Estate Commissioner shall not operate as a waiver of confidentiality or any privilege that the commissioner may assert.

(b) The commissioner shall establish and maintain, on the Web site maintained by the Department of Corporations, a separate and readily identifiable database of all persons who have been subject to any enforcement or disciplinary action that triggers the notification requirements of this section. The database shall also contain a direct link to the databases, described in Section 10176.1 of the Business and Professions Code and Section 12414.31 of the Insurance Code and required to be maintained on the Web sites of the Department of Real Estate and the Department of Insurance, respectively, of persons who have been subject to enforcement or disciplinary action for malfeasance or misconduct related to the escrow industry by the Insurance Commissioner and the Real Estate Commissioner.

(c) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the Department of Corporations, the Commissioner of Corporations, any other state agency, or any officer, agent, employee, consultant, or contractor of the state, for the release of any false or unauthorized information pursuant to this section, unless the release of that information was done with knowledge and malice, or for the failure to release any information pursuant to this section.

SEC. 4. Section 12414.31 is added to the Insurance Code, to read:

12414.31. (a) (1) Whenever the commissioner takes any formal enforcement or disciplinary action directly against an employee of a title insurer, underwritten title company, or controlled escrow company, for malfeasance or misconduct committed by the employee in his or her performance of escrow related services, upon the action becoming final the commissioner shall notify the Real Estate Commissioner and the Commissioner of Corporations of the action or actions taken. The purpose of this notification is to alert the departments that enforcement or disciplinary action has been taken, if the employee seeks or obtains employment with entities regulated by the departments.

(2) The commissioner shall provide the Real Estate Commissioner and the Commissioner of Corporations, in addition to the notification of the action taken, with a copy of the written accusation, statement of issues, or order issued or filed in the matter and, at the request of the Real Estate Commissioner or Commissioner of Corporations, with any

underlying factual material relevant to the enforcement or disciplinary action. Any confidential information provided by the commissioner to the Commissioner of Corporations or the Real Estate Commissioner shall not be made public pursuant to this section. Notwithstanding any other provision of law, the disclosure of any underlying factual material to the Commissioner of Corporations or the Real Estate Commissioner shall not operate as a waiver of confidentiality or any privilege that the commissioner may assert.

(b) The commissioner shall establish and maintain, on the Web site maintained by the Department of Insurance, a separate and readily identifiable database of all persons who have been subject to any enforcement or disciplinary action that triggers the notification requirements of this section. The database shall also contain a direct link to the databases, described in Section 10176.1 of the Business and Professions Code and Section 17423.1 of the Financial Code and required to be maintained on the Web sites of the Department of Real Estate and the Department of Corporations, respectively, of persons who have been subject to enforcement or disciplinary action for malfeasance or misconduct related to the escrow industry by the Commissioner of Corporations and the Real Estate Commissioner.

(c) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the Department of Insurance, the Insurance Commissioner, any other state agency, or any officer, agent, employee, consultant, or contractor of the state, for the release of any false or unauthorized information pursuant to this section, unless the release of that information was done with knowledge and malice, or for the failure to release any information pursuant to this section.

CHAPTER 661

An act to amend Section 1936 of the Civil Code, relating to rental vehicles.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 1936 of the Civil Code, as added by Section 2 of Chapter 992 of the Statutes of 1996, is amended to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) ''Rental company'' means any person or entity in the business of renting passenger vehicles to the public.

(2) ''Renter'' means any person in any manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) ''Authorized driver'' means (A) the renter, (B) the renter's spouse if that person is a licensed driver and satisfies the rental company's minimum age requirement, (C) the renter's employer or coworker if they are engaged in business activity with the renter, are licensed drivers, and satisfy the rental company's minimum age requirement, and (D) any person expressly listed by the rental company on the renter's contract as an authorized driver.

(A) ''Customer facility charge'' means a fee required by an airport to be collected by a rental company from a renter for any of the following purposes:

(i) The fee shall be used to finance, design, and construct consolidated airport car rental facilities.

(ii) The fee shall be used to finance, design, construct, and provide common use transportation systems that move passengers between airport terminals and those consolidated car rental facilities.

(B) The aggregate amount to be collected shall not exceed the reasonable costs, as determined by an independent audit paid for by the airport, to finance, design, and construct those facilities. Copies of the audit shall be provided to the Assembly and Senate Committees on Judiciary and Committees on Transportation. In the case of a transportation system, the audit shall also consider the reasonable costs of providing the transit system or busing network. At the Burbank Airport, and at all other airports, the fees designated as a Customer Facility Charge may not be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport.

(C) The authorization given pursuant to this section for an airport to impose a customer facility charge shall become inoperative when the bonds used for financing are paid.

(5) ''Damage waiver'' means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

(6) ''Estimated time for replacement'' means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as ''crash books.''

(7) ''Estimated time for repair'' means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(8) ''Passenger vehicle'' means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle. In addition, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle; however, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(6) An administrative charge which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, repair, or replacement of the rented vehicle.

(c) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle shall not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts which shall not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts which shall not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(4) For the purpose of converting the estimated time for repair into the same units of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Actual charges for towing, storage, and impound fees paid by the rental company.

(6) The administrative charge described in paragraph (6) of subdivision (b) shall not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500). No administrative charge shall be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle shall not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company shall not recover from the renter or other authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A claim against a renter resulting from damage or loss, excluding loss of use, to a rental vehicle shall be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and may not assert or collect any claim for physical damage which exceeds the actual costs of the repairs performed or the estimated cost of repairs, if the rental company chooses not to repair the vehicle, including all discounts and price reductions. However, if the vehicle is a total loss vehicle, the claim shall not exceed the total loss vehicle value established in accordance with procedures that are customarily used by insurance companies when paying claims on total loss vehicles, less the proceeds from salvaging the vehicle, if those proceeds are retained by the rental company.

(4) If insurance coverage exists under the renter's applicable personal or business insurance policy and the coverage is confirmed during regular business hours, the renter may require that the rental company submit any claims to the renter's applicable personal or business insurance carrier. The rental company shall not make any written or oral representations that it will not present claims or negotiate with the renter's insurance carrier. For purposes of this paragraph, confirmation of coverage includes telephone confirmation from insurance company representatives during regular business hours. Upon request of the renter and after confirmation of coverage, the amount of claim shall be resolved between the insurance carrier and the rental company. The renter shall remain responsible for payment to the rental car company for any loss sustained that the renter's applicable personal or business insurance policy does not cover.

(5) A rental company shall not recover from the renter or other authorized driver for any item described in subdivision (b) to the extent the rental company obtains recovery from any other person.

(6) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of any other person.

(e) (1) Except as provided in subdivision (f), every damage waiver shall provide or, if not expressly stated in writing, shall be deemed to provide that the renter has no liability for any damage, loss, loss of use, or any cost or expense incident thereto.

(2) Except as provided in subdivision (f), every limitation, exception, or exclusion to any damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if the damage or loss is a direct result of the road or driving conditions.

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other than an authorized driver, or (E) operated outside of the United States.

(3) Any authorized driver who has (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) (1) A rental company which offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract: (A) the nature of the renter's liability, e.g., liability for all collision damage regardless of cause, (B) the extent of the renter's liability, e.g., liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy or the credit card used to pay for the car rental transaction may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, including the amount of the deductible, if any, for which the renter is obligated, (E) the renter may purchase an optional damage waiver to cover all liability, subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the range of charges for the damage waiver.

(2) In addition to the requirements of paragraph (1), a rental company that offers or provides damage waiver shall, on that part of the contract where the renter indicates his or her acceptance or declination of the damage waiver, indicate that the purchase of the damage waiver is optional.

(3) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage

to the full value of the vehicle:

NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, and towing, storage, and impound fees.

Your own insurance, or the issuer of the credit card you use to pay for the car rental transaction, may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company, or credit car issuer, to find out about your coverage and the amount of the deductible, if any, for which you may be liable.

Further, if you use a credit card that provides coverage for your potential liability, you should check with the issuer to determine if you must first exhaust the coverage limits of your own insurance before the credit card coverage applies.

The rental company will not hold you responsible if you buy a damage waiver. But a damage waiver will not protect you if (list exceptions).

(A) When the above notice is printed in the contract or contractholder, the following shall be printed immediately following the notice:

''The cost of an optional damage waiver is $ ____ for every (day or week).''

(B) When the above notice appears on a sign, the following shall appear immediately adjacent to the notice:

''The cost of an optional damage waiver is $ ____ to $ ____ for every (day or week), depending upon the vehicle rented.''

(h) Notwithstanding any other provision of law, a rental company may sell a damage waiver subject to the following rate limitations for each full or partial 24-hour rental day for the damage waiver.

(1) For rental vehicles that the rental company designates as an ''economy car,'' ''subcompact car,'' ''compact car,'' or any other term having similar meaning when offered for rental, or any other vehicle having a manufacturer's suggested retail price of nineteen thousand dollars ($19,000) or less, the rate may not exceed nine dollars ($9).

(2) For rental vehicles that have a manufacturer's suggested retail price from nineteen thousand one dollars ($19,001) to thirty-four thousand nine hundred ninety-nine dollars ($34,999), inclusive, and that is also either a vehicle of the next year's model year or not older than the previous year's model year, the rate may not exceed fifteen dollars ($15). For those rental vehicles older than the previous year's model year, the rate may not exceed nine dollars ($9).

(i) On or after January 1, 2003, the manufacturer's suggested retail prices described in subdivision (h) shall be adjusted annually to reflect changes from the previous year in the Consumer Price Index. For the purposes of this section, ''Consumer Price Index'' means the United States Consumer Price Index for All Urban Consumers, for all items.

(j) A rental company which disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for damage waiver and a statement that damage waiver is optional.

(k) (1) A rental company shall not require the purchase of a damage waiver, optional insurance, or any other optional good or service.

(2) A rental company shall not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase damage waiver, optional insurance, or any other optional good or service, including conduct such as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card account for a sum equivalent to a deposit if the renter declines to purchase damage waiver, optional insurance, or any other optional good or service.

(*l*) (1) In the absence of express permission granted by the renter subsequent to damage to, or loss of, the vehicle, a rental company shall not seek to recover any portion of any claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing any debit or block to be placed on the renter's credit card account.

(2) A rental company shall not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(m) (1) A customer facility charge may be collected by a rental company under the following circumstances:

(A) Collection of the fee by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, or a special district.

(B) The fee is calculated on a per-contract basis.

(C) The fee is a user fee, not a tax imposed upon real property or an incidence of property ownership under Article XIII D of the California Constitution.

(D) Except as otherwise provided in subparagraph (E), the fee shall be ten dollars ($10) per contract.

(E) If the fee imposed by the airport is for both a consolidated rental car facility and a common use transportation system, the fee collected from customers of on-airport rental car companies shall be ten dollars ($10), but the fee imposed on customers of off-airport rental car companies who are transported on the common use transportation system is proportionate to the costs of the common use transportation

system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided the airport requires off-airport customers to use the common use transportation system.

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, constructing, or operating the facility or services and may not be used for any other purpose.

(G) The fee is separately identified on the rental agreement.

(H) This paragraph does not apply to airports whose fees are governed by Section 1936.5 of the Civil Code, Section 50474.1 of the Government Code, or Section 57.5 of the San Diego Unified Port District Act.

(2) Notwithstanding any other provision of law, including, but not limited to, Part 1 (commencing with Section 6001) to Part 1.7 (commencing with Section 7280), inclusive, of Division 2 of the Revenue and Taxation Code, the fees collected pursuant to this section, or any other law whereby a local agency operating an airport requires a rental car company to collect a facility financing fee from its customers, shall not be subject to sales, use, or transaction taxes.

(n) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, if any, and a mileage charge, if any, which a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee which must be paid by the renter as a condition of hiring or leasing the vehicle, such as, but not limited to, required fuel or airport surcharges other than customer facility charges, nor any fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, customer facility charges, if any, and mileage charges, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge, include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company shall not charge any fee for authorized drivers in addition to the rental charge for an individual renter.

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall clearly disclose in that advertisement or quotation the terms of any mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

(5) (A) When a rental rate is stated in an advertisement, quotation, or reservation in connection with a car rental at an airport where a customer facility charge is imposed, the rental company shall clearly disclose the existence and amount of the customer facility charge. For the purposes of this subparagraph, advertisements include radio, television, other electronic media, and print advertisements. For purposes of this subparagraph, quotations and reservations include those that are telephonic, in-person, and computer-transmitted. If the rate advertisement is intended to include transactions at more than one airport imposing a customer facility charge, a range of fees may be stated in the advertisement. However, all rate advertisements that include car rentals at airport destinations shall clearly and conspicuously include a toll-free telephone number whereby a customer can be told the specific amount of the customer facility charge to which the customer will be obligated.

(B) If any person or entity other than a rental car company, including a passenger carrier or a seller of travel services, advertises or quotes a rate for a car rental at an airport where a customer facility charge is imposed, that person or entity shall, provided they are provided with information about the existence and amount of the fee, to the extent not specifically prohibited by federal law, clearly disclose the existence and amount of the fee in any telephonic, in-person, or computer-transmitted quotation at the time of making an initial quotation of a rental rate and at the time of making a reservation of a rental car. If a rental car company provides the person or entity with rate and customer facility charge information, the rental car company shall not be responsible for the failure of that person or entity to comply with this subparagraph when quoting or confirming a rate to a third person or entity.

(6) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental

for the period after the renter notifies the rental company to pick up the vehicle.

(o) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(p) A rental company that brings an action against a renter for loss due to theft of the vehicle shall bring the action in the county in which the renter resides or if the renter is not a resident of this state in the jurisdiction in which the renter resides.

(q) Any waiver of any of the provisions of this section shall be void and unenforceable as contrary to public policy.

(r) This section shall become operative on January 1, 2002.

CHAPTER 662

An act to amend Sections 17302, 17304, 17310, 17312, 17314, and 17331.1 of the Financial Code, relating to escrow agents.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 17302 of the Financial Code is amended to read:

17302. ''Trust obligation'' means:

(a) All money and property deposited with a member within the State of California in an escrow or joint control transaction.

(b) All money and property deposited with a member to be held in trust within the State of California pursuant to a federal or state statute or requirements of a governmental agency.

SEC. 2. Section 17304 of the Financial Code is amended to read:

17304. ''Loss,'' within the meaning of this chapter, means the loss of trust obligations held by a member within the State of California as a result of the fraudulent or dishonest abstraction, misappropriation, or embezzlement of trust obligations by an officer, director, trustee, stockholder, manager, or employee of a member.

SEC. 3. Section 17310 of the Financial Code is amended to read:

17310. (a) It shall be the purpose of Fidelity Corporation to indemnify a member within the State of California against loss, subject to the limitations set forth in this chapter.

(b) Fidelity Corporation shall not be liable for any consequential damages sustained by a member, or by any other person, nor for any punitive damages whatsoever.

(c) The indemnification shall be provided by any of the following:

(1) A fund established by Fidelity Corporation pursuant to Section 17320.

(2) A fidelity bond or insurance policy to be approved by the commissioner.

(3) A combination of paragraphs (1) and (2) subject, however, to the maximum coverage specified in subdivision (b) of Section 17314.

SEC. 4. Section 17312 of the Financial Code is amended to read:

17312. (a) Each person licensed pursuant to this division who is engaged in the business of receiving escrows specified in subdivision (c) and whose escrow business location is located within the State of California shall participate as a member in Fidelity Corporation in accordance with this chapter and rules established by the board of directors of Fidelity Corporation. Fidelity Corporation shall not deny membership to any escrow agent holding a valid unrevoked license under the Escrow Law who is required to be a member under this subdivision.

(b) Upon filing a new application for licensure as required by subdivision (b) of Section 17213, persons required to be a member of Fidelity Corporation shall file a copy thereof concurrently with Fidelity Corporation, but no additional membership fee or deposit shall be required.

(c) The required membership in Fidelity Corporation shall be limited to those licensees whose escrow business location is located within the State of California and who engage, in whole or in part, in the business of receiving escrows for deposit or delivery in the following types of transactions:

(1) Real property escrows, including, but not limited to, the sale, encumbrance, lease, exchange, or transfer of title, and loans or other obligations to be secured by a lien upon real property.

(2) Bulk sale escrows, including, but not limited to, the sale or transfer of title to a business entity and the transfer of liquor licenses or other types of business licenses or permits.

(3) Fund or joint control escrows, including, but not limited to, transactions specified in Section 17005.1, and contracts specified in Section 10263 of the Public Contract Code.

(4) The sale, transfer of title, or refinance escrows for manufactured homes or mobilehomes.

(5) Reservation deposits required under Article 2 (commencing with Section 11010) of Chapter 1 of Part 2 of Division 4 of the Business and

Professions Code or by regulation of the Department of Real Estate to be held in an escrow account.

(6) Escrows for sale, transfer, modification, assignment, or hypothecation of promissory notes secured by deeds of trust.

(d) Coverage required to be provided by Fidelity Corporation under this chapter shall be provided to members only for loss of trust obligations with respect to those types of transactions specified in subdivision (c). Indemnity coverage for those types of transactions not specified in subdivision (c) shall be provided by escrow agents in accordance with Section 17203.1.

SEC. 5. Section 17314 of the Financial Code is amended to read:

17314. (a) Fidelity Corporation shall pay a member for loss of trust obligations subject to the limitations set forth in this chapter. Fidelity Corporation shall pay or deny the claim within 90 days of receipt of the proof of loss filed by a member, or a member's successor in interest. Notwithstanding any other provision of this article, the protection to members provided by Fidelity Corporation and by the fidelity bond or insurance policy, if any, shall not extend to any transaction involving any member at any branch or business location outside the State of California, but shall extend only to escrow trust obligations and trust funds located within the State of California.

(b) Coverage shall be provided to members in accordance with the following schedule:

MONTHLY AVERAGE ESCROW LIABILITY PER LOCATION	COVERAGE
$0 – $ 1,000,000	$1,000,000
over $1,000,000 – $ 3,000,000	$2,000,000
over $3,000,000 – $ 5,000,000	$3,000,000
over $5,000,000 – $ 7,500,000	$4,000,000
over $7,500,000 – $10,000,000	$5,000,000

(c) A member shall maintain minimum coverage in accordance with the schedule in subdivision (b) and shall monitor its escrow liability monthly. An increase in escrow liability above the monthly average escrow liability coverage as provided for in subdivision (b) shall be reported immediately to Fidelity Corporation. Upon receipt of this report, Fidelity Corporation shall immediately provide for the increase in coverage, and shall immediately bill and collect pursuant to Section 17321, an amount necessary to provide for the increased coverage.

(d) Any member with a licensed location or locations with a monthly average escrow liability greater than ten million dollars ($10,000,000) shall obtain a bond from a corporate surety which is an admitted insurer in the State of California insuring the balance of trust funds not covered

by Fidelity Corporation, in a ratio of one dollar of coverage for every three dollars of trust obligations not covered by Fidelity Corporation. The Fidelity Corporation shall have the authority to obtain the excess coverage bond. The cost of the bond shall be shared pro rata by those members included in the coverage.

(e) If a member establishes, to the satisfaction of the commissioner, that a bond is not available or is impracticable under subdivision (d), then, at the member's election, either:

(1) The member shall place average trust obligations in excess of ten million dollars ($10,000,000) in a restricted escrow trust account. Each transfer or release of the funds to be made by specific resolution of the member's board of directors and the signature of a neutral third party and written approval of Fidelity Corporation; or

(2) The licensed location of the member with average trust balances in excess of ten million dollars ($10,000,000) shall be subject to examinations to be conducted at a frequency as deemed appropriate and necessary by the commissioner or Fidelity Corporation, but not less frequently than once a year.

(f) Any member subject to subdivision (e) shall within 10 business days after the effective date of this section notify Fidelity Corporation of its election. A member who subsequently becomes subject to subdivision (e) shall within a like period of time notify Fidelity Corporation of its election. Fidelity Corporation shall also be notified of any change of election in a like period of time. Fidelity Corporation shall notify the commissioner within 10 business days of receipt of any notice under this subdivision of the elections made. All notices under this subdivision shall be in writing.

SEC. 6. Section 17331.1 of the Financial Code is amended to read:

17331.1. (a) As of January 1, 1992, any person not previously issued a certificate must, upon employment with an escrow agent within this state, apply to Fidelity Corporation for a certificate within 10 business days. The person may continue employment until or unless denied a certificate by Fidelity Corporation. The member shall submit all applications for certificates to Fidelity Corporation within 10 business days of the date of employment.

(b) Upon written notice by Fidelity Corporation to any or all members that any person has been denied a certificate, or has had a certificate suspended, canceled, or revoked, no member or person acting on behalf of a member shall authorize that person to have access to money or negotiable securities belonging to or in the possession of the escrow agent, or to draw checks upon the escrow agent or the trust accounts of the escrow agent. Any member or person who commits or who causes a violation of this section, which violation was either known or should have been known by the member or the person committing or causing

the violation, may be subject to action by the commissioner and Fidelity Corporation as provided for in this division.

(c) Each member and each person required to have a certificate shall comply with the Fidelity Corporation rules, to be approved by the commissioner, concerning the manner and timing within which Fidelity Corporation shall receive notice of employment, change of the person's name, mailing address, or employment status, the certificate form, and the procedures for the administration thereof. Fidelity Corporation may collect a fee to cover the cost of processing the notices but no fee shall exceed twenty-five dollars ($25).

(d) Fidelity Corporation shall assess the member a penalty at the rate of twenty-five dollars ($25) for every day that the member has not fully complied with this section, Section 17331, or Section 17331.2.

(e) Any member that suffers a loss of trust obligations caused by any person who is required to have a certificate but has (1) failed to apply for a certificate, (2) has had the application for a certificate denied, (3) has a suspended certificate, or (4) whose certificate has been revoked shall be obligated to pay a deductible in the amount of 100 percent of the amount of the loss, notwithstanding the amount of the statutory deductible as prescribed by Section 17314.3. The failure to obtain a certificate, the denial of an application for a certificate, or the suspension, cancellation, or revocation of a certificate shall not limit the obligation of Fidelity Corporation to indemnify a member against loss of trust obligations as defined in this division.

CHAPTER 663

An act to amend Sections 25187 and 25404.8 of the Health and Safety Code, relating to the environment.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 25187 of the Health and Safety Code is amended to read:

25187. (a) (1) The department or a unified program agency, in accordance with subdivision (*l*), may issue an order requiring that the violation be corrected and imposing an administrative penalty, for any violation of this chapter or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, whenever the department or unified program agency determines that a person has

violated, is in violation of, or threatens, as defined in subdivision (e) of Section 13304 of the Water Code, to violate, this chapter or Chapter 6.8 (commencing with Section 25300), or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter or Chapter 6.8 (commencing with Section 25300).

(2) In an order proposing a penalty pursuant to this section, the department or unified program agency shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed penalty, and the prophylactic effect that the imposition of the proposed penalty would have on both the violator and the regulated community as a whole.

(b) The department or a unified program agency, in accordance with subdivision (*l*), may issue an order requiring corrective action whenever the department or unified program agency determines that there is or has been a release, as defined in Chapter 6.8 (commencing with Section 25300), of hazardous waste or constituents into the environment from a hazardous waste facility.

(1) In the case of a release of hazardous waste or constituents into the environment from a hazardous waste facility that is required to obtain a permit pursuant to Article 9 (commencing with Section 25200), the department shall pursue the remedies available under this chapter, including the issuance of an order for corrective action pursuant to this section, before using the legal remedies available pursuant to Chapter 6.8 (commencing with Section 25300), except in any of the following circumstances:

(A) Where the person who is responsible for the release voluntarily requests in writing that the department issue an order to that person to take corrective action pursuant to Chapter 6.8 (commencing with Section 25300).

(B) Where the person who is responsible for the release is unable to pay for the cost of corrective action to address the release. For purposes of this subparagraph, the inability of a person to pay for the cost of corrective action shall be determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code.

(C) Where the person responsible for the release is unwilling to perform corrective action to address the release. For purposes of this subparagraph, the unwillingness of a person to take corrective action shall be determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code.

(D) Where the release is part of a regional or multisite groundwater contamination problem that cannot, in its entirety, be addressed using the legal remedies available pursuant to this chapter and for which other releases that are part of the regional or multisite groundwater contamination problem are being addressed using the legal remedies available pursuant to Chapter 6.8 (commencing with Section 25300).

(E) Where an order for corrective action has already been issued against the person responsible for the release, or the department and the person responsible for the release have, prior to January 1, 1996, entered into an agreement to address the required cleanup of the release pursuant to Chapter 6.8 (commencing with Section 25300).

(F) Where the hazardous waste facility is owned or operated by the federal government.

(2) The order shall include a requirement that the person take corrective action with respect to the release of hazardous waste or constituents, abate the effects thereof, and take any other necessary remedial action.

(3) If the order requires corrective action at a hazardous waste facility, the order shall require that corrective action be taken beyond the facility boundary, where necessary to protect human health or the environment.

(4) The order shall incorporate, as a condition of the order, any applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code and state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code existing at the time of the issuance of the order, to the extent that the department or unified program agency determines that those plans and policies are not less stringent than this chapter and regulations adopted pursuant to this chapter. The order may include any more stringent requirement that the department or unified program agency determines is necessary or appropriate to protect water quality.

(5) Persons who are subject to an order pursuant to this subdivision include present and prior owners, lessees, or operators of the property where the hazardous waste is located, present or past generators, storers, treaters, transporters, disposers, and handlers of hazardous waste, and persons who arrange, or have arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

(6) For purposes of this subdivision, ''hazardous waste facility'' includes the entire site that is under the control of an owner or operator engaged in the management of hazardous waste.

(c) Any order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person so served of the right to a hearing. If the unified program agency issues the order pursuant to this section, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (f) may be requested by the person receiving the order.

(d) Any person served with an order pursuant to this section who has been unable to resolve any violation or deficiency on an informal basis with the department or unified program agency may, within 15 days after service of the order, request a hearing pursuant to subdivision (e) or (f) by filing with the department or unified program agency a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(e) Any hearing requested on an order issued by the department shall be conducted within 90 days after receipt of the notice of defense by an administrative law judge of the Office of Administrative Hearings of the Department of General Services in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the authority granted to an agency by those provisions.

(f) Except as provided in subparagraph (B) of paragraph (2), a person requesting a hearing on an order issued by a unified program agency may select the hearing process specified in either paragraph (1) or (2) in the notice of defense filed with the unified program agency pursuant to subdivision (d). Within 90 days of receipt of the notice of defense by the unified program agency, the hearing shall be conducted using one of the following procedures:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) (A) A hearing officer designated by the unified program agency shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the unified program agency shall have all the authority granted to an agency by those provisions. When a hearing is conducted by a unified program agency pursuant to this paragraph, the unified program agency shall, within 60 days of the hearing, issue a decision.

(B) A person requesting a hearing on an order issued by a unified program agency may select the hearing process specified in this paragraph in a notice of defense filed pursuant to subdivision (d) only

if the unified program agency has, as of the date the order is issued pursuant to subdivision (c), selected a designated hearing officer and established a program for conducting a hearing in accordance with this paragraph.

(g) The hearing decision issued pursuant to subdivision (f) shall be effective and final upon issuance. Copies of the decision shall be served by personal service or by certified mail upon the party served with the order and upon other persons who appeared at the hearing and requested a copy.

(h) Any provision of an order issued under this section, except the imposition of an administrative penalty, shall take effect upon issuance by the department or unified program agency if the department or unified program agency finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment, and a request for a hearing shall not stay the effect of that provision of the order pending a hearing decision. However, if the department or unified program agency determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, then the order as a whole, except the imposition of an administrative penalty, shall take effect upon issuance by the department or unified program agency. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.

(i) A decision issued pursuant to this section may be reviewed by the court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the department or unified program agency if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(j) All administrative penalties collected from actions brought by the department pursuant to this section shall be placed in a separate subaccount in the Toxic Substances Control Account and shall be available only for transfer to the Site Remediation Account or the Expedited Site Remediation Trust Fund and for expenditure by the department upon appropriation by the Legislature.

(k) All administrative penalties collected from an action brought by a unified program agency pursuant to this section shall be paid to the city or county whose unified program agency imposed the penalty, and shall be deposited into a special account that shall be expended to fund the

activities of the unified program agency in enforcing this chapter pursuant to Section 25180.

(*l*) The authority granted under this section to a unified program agency is limited to both of the following:

(1) The issuance of orders to impose penalties and to correct violations of the requirements of this chapter and its implementing regulations, only when the violations are violations of requirements applicable to hazardous waste generators and persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, when the violations occur at a unified program facility within the jurisdiction of the CUPA.

(2) The issuance of orders to require corrective action when there has been a release of hazardous waste or constituents only when the unified program agency is authorized to do so pursuant to Section 25404.1.

(m) The CUPA shall annually submit a summary report to the department on the status of orders issued by the unified program agencies under this section and Section 25187.1.

(n) The CUPA shall consult with the district attorney for the county on the development of policies to be followed in exercising the authority delegated pursuant to this section and Section 25187.1, as they relate to the authority of unified program agencies to issue orders.

(o) The CUPA shall arrange to have appropriate legal representation in administrative hearings that are conducted by an administrative law judge of the Office of Administrative Hearings of the Department of General Services, and when a decision issued pursuant to this section is appealed to the superior court.

(p) The department may adopt regulations to implement this section and paragraph (2) of subdivision (a) of Section 25187.1 as they relate to the authority of unified program agencies to issue orders. The regulations shall include, but not be limited to, all of the following requirements:

(1) Provisions to ensure coordinated and consistent application of this section and Section 25187.1 when both the department and the unified program agency have or will be issuing orders under one or both of these sections at the same facility.

(2) Provisions to ensure that the enforcement authority granted to the unified program agencies will be exercised consistently throughout the state.

(3) Minimum training requirements for staff of the unified program agency relative to this section and Section 25187.1.

(4) Procedures to be followed by the department to rescind the authority granted to a unified program agency under this section and Section 25187.1, if the department finds that the unified program agency is not exercising that authority in a manner consistent with this chapter

and Chapter 6.11 (commencing with Section 25404) and the regulations adopted pursuant thereto.

(q) Except for an enforcement action taken pursuant to this chapter or Chapter 6.8 (commencing with Section 25300), this section does not otherwise affect the authority of a local agency to take any action under any other provision of law.

SEC. 2. Section 25404.8 of the Health and Safety Code is amended to read:

25404.8. (a) In a county for which a CUPA has not been certified on or before January 1, 2000, and where the unified program is implemented pursuant to paragraph (2) of subdivision (f) of Section 25404.3, the CUPA is eligible for an allocation pursuant to subdivision (d). The CUPA shall institute a single fee system that meets the requirements of Section 25404.5, except that the amounts to be paid by each person regulated by the unified program under the single fee system shall be set at a level so that the revenues collected under the single fee system and the amount allocated pursuant to subdivision (d) are sufficient to pay the necessary costs incurred by the CUPA in implementing the unified program. The CUPA shall determine the level to be paid by persons regulated under the unified program by conducting a workload analysis that establishes the direct and indirect costs to the CUPA of implementing the unified program.

(b) A CUPA that implements the unified program pursuant to paragraph (2) of subdivision (f) of Section 25404.3 shall use the funding allocated pursuant to subdivision (d) to implement the unified program within the jurisdiction of the CUPA in accordance with the implementation agreement reached with the secretary pursuant to paragraph (2) of subdivision (f) of Section 25404.3.

(c) The Rural CUPA Reimbursement Account is hereby established in the General Fund and the secretary may expend the money in the account to make the allocations specified in subdivision (d).

(d) (1) Except as provided in paragraph (2), the secretary shall allocate the following amounts from the Rural CUPA Reimbursement Account to an eligible county:

(A) If the county has a population of less than 70,000 persons, the amount of the funds allocated from the account shall not exceed 75 percent of the budgeted costs as approved by the local governing body for implementation of the unified program.

(B) If the county has a population of more than 70,000, but less than 100,000 persons, the amount of the funds allocated from the account shall not exceed 50 percent of the budgeted costs as approved by the local governing body for implementation of the unified program.

(C) If the county has a population of more than 100,000, but less than 150,000 persons, the amount of the funds allocated from the account

shall not exceed 35 percent of the budgeted costs as approved by the local governing body for implementation of the unified program.

(2) The secretary shall not allocate more than sixty thousand dollars ($60,000) for all CUPAs in an eligible county.

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

SEC. 3. Nothing in this act shall be construed to apply any penalty subject to apportionment by Section 25192 of the Health and Safety Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 664

An act relating to water.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Notwithstanding Section 13260 of the Water Code, or any other provision of law, the State Water Resources Control Board or a regional water quality control board may not impose a fee in connection with prescribing waste discharge requirements for the Replacement Pier and Dredging Project, United States Naval Station, San Diego, Milcon Project P-326.

CHAPTER 665

An act to add and repeal Section 12751.3 of the Public Utilities Code, relating to public utilities.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 12751.3 is added to the Public Utilities Code, to read:

12751.3. (a) The purpose of this section is to provide affected districts with an alternative acquisition process that will result in reduced costs to ratepayers. Notwithstanding Section 12751, when the expenditure for the purchase of supplies and materials exceeds fifty thousand dollars ($50,000) and the district determines that ratepayers reasonably can expect a net benefit in the cost of district services, the district may provide for the purchase of the supplies and materials by contract let in accordance with best value at the lowest cost acquisition policies adopted by the board pursuant to this section.

(b) The best value at the lowest cost acquisition policies adopted pursuant to subdivision (a) shall consider, but not be limited to, all of the following:

(1) Price and service level proposals that reduce the district's overall operating costs.

(2) Supplies and materials standards that support the district's strategic supplies and materials acquisition and management program direction.

(3) A procedure for protest and resolution.

(4) Any other factors the board determines to be relevant.

(c) For purposes of this section, ''best value'' means any factor or criterion established by a district to ensure that its business needs and goals are effectively met and that the district obtains the most value for an authorized acquisition. The term ''best value at the lowest cost acquisition'' means a competitive procurement process whereby the award of a contract for supplies and materials may take into consideration any of the following factors:

(1) The total cost to the district of its use or consumption of supplies and materials.

(2) The operational cost or benefit incurred by the district as a result of contract award.

(3) The value to the district of vendor-added services.

(4) The quality, effectiveness, and innovation of supplies, materials, and services.

(5) The reliability of delivery or installation schedules.

(6) The terms and conditions of product warranties and vendor guarantees.

(7) The financial stability of the vendor.

(8) The vendor's quality assurance program.

(9) The vendor's experience with the provision of supplies, material, and services.

(10) The consistency of the vendor's proposed supplies, materials, and services with the district's overall supplies and materials procurement program.

(11) The economic benefits to the general community, including, but not limited to, job creation or retention.

(d) If a district elects to purchase supplies and materials by contract, let in accordance with best value acquisition policies adopted by the board pursuant to this section, the district shall submit a report to the Legislative Analyst on or before January 1, 2006. The district shall include in the report a summary of the costs and benefits of best value acquisition compared to traditional low bid procurement practices. The report shall also include statistics showing the number of contracts awarded to small businesses, minority-owned businesses, and new businesses and the number of years each contract awardee had been in business. The report shall also include an analysis of the effects of best value procurement practices on these businesses, the nature of any disputes arising from the use of best value procurement practices, and the status of those disputes. On or before April 1, 2006, the Legislative Analyst shall report to the Legislature on the use of ''best value at lowest cost acquisition'' procurement practices used by municipal utility districts. The report may include recommendations for modifying the provisions of this section and extending the operation of this section beyond January 1, 2007.

(e) The district shall ensure that all businesses have a fair and equitable opportunity to compete for, and participate in, district contracts and shall also ensure that discrimination in the award and performance of contracts does not occur on the basis of race, color, sex, national origin, marital status, sexual preference, creed, ancestry, medical condition, or retaliation for having filed a discrimination complaint in the performance of district contractual obligations.

(f) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

CHAPTER 666

An act to amend Sections 999.2, 999.7, and 999.11 of, and to amend, renumber, and add Section 999.12 of, the Military and Veterans Code, relating to veterans affairs.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 999.2 of the Military and Veterans Code is amended to read:

999.2. Notwithstanding any other provision of law, contracts awarded by any state agency, department, officer, or other state governmental entity, including school districts when they are expending state funds for construction, professional services (except those subject to Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government Code), materials, supplies, equipment, alteration, repair, or improvement shall have statewide participation goals of not less than 3 percent for disabled veteran business enterprises. These goals apply to the overall dollar amount expended each year by the awarding department.

SEC. 2. Section 999.7 of the Military and Veterans Code is amended to read:

999.7. (a) Notwithstanding Section 7550.5 of the Government Code, on January 1 of each year, each awarding department shall report to the Governor, the Legislature, the Office of Small Business Certification and Resources, and the Department of Veterans Affairs on the level of participation by disabled veteran business enterprises in contracts identified in this article for the previous fiscal year. If the established goals are not met, the awarding department shall report to the Legislature, the Office of Small Business Certification and Resources, and the Department of Veterans Affairs the reasons for the awarding department's inability to achieve the goals and identify steps it shall take in an effort to achieve the goals.

(b) Notwithstanding Section 7550.5 of the Government Code, on April 1 of each year, the Office of Small Business Certification and Resources shall prepare for the Governor, the Legislature, and the Department of Veterans Affairs a statewide statistical summary detailing each awarding department's goal achievement and a statewide total of those goals.

SEC. 3. Section 999.11 of the Military and Veterans Code is amended to read:

999.11. The Department of Veterans Affairs shall appoint an advocate to do all of the following:

(a) Oversee, promote, and coordinate efforts to facilitate implementation of this article.

(b) Disseminate information on this article.

(c) Coordinate reports pursuant to Section 999.7.

(d) Coordinate with administering agencies and existing and potential disabled veteran business enterprises to achieve the goals specified in Sections 999.1 and 999.2.

(e) Coordinate with the disabled veteran business enterprise advocates appointed in all awarding departments pursuant to Section 999.12.

SEC. 4. Section 999.12 of the Military and Veterans Code, is amended and renumbered to read:

999.13. This article includes language similar to that contained in Article 1.5 (commencing with Section 10115) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code and does not create an independent or additional goal or program.

SEC. 5. Section 999.12 is added to the Military and Veterans Code, to read:

999.12. Each awarding department shall appoint an agency disabled veteran business enterprise advocate. This person shall be the same individual appointed pursuant to Section 14846 of the Government Code. The disabled veteran business enterprise advocate shall do all of the following:

(a) Assist certified disabled veteran business enterprises in participating in that agency's contracting process.

(b) Assist contract officers in seeking disabled veteran business enterprises to participate in the agency's contract and procurement activities.

(c) Disseminate information to the agency's contract and procurement staff.

(d) Serve as an advocate for the disabled veteran business enterprises that are utilized as the agency's contractors or subcontractors.

(e) Report to the Office of Small Business Certification and Resources regarding any violation of this article.

(f) Coordinate with the state disabled veteran business enterprise advocate at the Department of Veterans Affairs in an effort to meet the statewide 3-percent goal provided for in Section 999.2.

CHAPTER 667

An act to amend Sections 56375, 56425, 56821, 56821.5, 56822, 56824.1, 56824.7, 56834, 56853, 56863, 56886, and 57114 of, to add Section 56877 to, to add Article 1.5 (commencing with Section 56824.10) to Chapter 5 of Part 3 of Division 3 of Title 5 of, to repeal Sections 56820, 56820.5, 56820.7, and 56821.7 of, and to repeal and add Section 56811 of, the Government Code, relating to local agency formation.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 56375 of the Government Code is amended to read:

56375. The commission shall have all of the following powers and duties subject to any limitations upon its jurisdiction set forth in this part:

(a) To review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission. The commission may initiate proposals for (1) consolidation of districts, as defined in Section 56036, (2) dissolution, (3) merger, or (4) establishment of a subsidiary district, or a reorganization that includes any of these changes of organization. A commission shall have the authority to initiate only a (1) consolidation of districts, (2) dissolution, (3) merger, (4) establishment of a subsidiary district, or (5) a reorganization that includes any of these changes of organization, if that change of organization or reorganization is consistent with a recommendation or conclusion of a study prepared pursuant to Section 56378 or 56425, and the commission makes the determinations specified in subdivision (b) of Section 56881. However, a commission shall not have the power to disapprove an annexation to a city, initiated by resolution, of contiguous territory that the commission finds is any of the following:

(1) Surrounded or substantially surrounded by the city to which the annexation is proposed or by that city and a county boundary or the Pacific Ocean if the territory to be annexed is substantially developed or developing, is not prime agricultural land as defined in Section 56064, is designated for urban growth by the general plan of the annexing city, and is not within the sphere of influence of another city.

(2) Located within an urban service area that has been delineated and adopted by a commission, which is not prime agricultural land, as defined by Section 56064, and is designated for urban growth by the general plan of the annexing city.

(3) An annexation or reorganization of unincorporated islands meeting the requirements of Section 56375.3.

As a condition to the annexation of an area that is surrounded, or substantially surrounded, by the city to which the annexation is proposed, the commission may require, where consistent with the purposes of this division, that the annexation include the entire island of surrounded, or substantially surrounded, territory.

A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements. When the development purposes are not made known to the annexing city, the annexation shall be reviewed on

the basis of the adopted plans and policies of the annexing city or county. A commission shall require, as a condition to annexation, that a city prezone the territory to be annexed. However, the commission shall not specify how, or in what manner, the territory shall be prezoned. The decision of the commission with regard to a proposal to annex territory to a city shall be based upon the general plan and prezoning of the city.

(b) With regard to a proposal for annexation or detachment of territory to, or from, a city or district or with regard to a proposal for reorganization that includes annexation or detachment, to determine whether territory proposed for annexation or detachment, as described in its resolution approving the annexation, detachment, or reorganization, is inhabited or uninhabited.

(c) With regard to a proposal for consolidation of two or more cities or districts, to determine which city or district shall be the consolidated, successor city or district.

(d) To approve the annexation of unincorporated, noncontiguous territory, subject to the limitations of Section 56742, located in the same county as that in which the city is located, and that is owned by a city and used for municipal purposes and to authorize the annexation of the territory without notice and hearing.

(e) To approve the annexation of unincorporated territory consistent with the planned and probable use of the property based upon the review of general plan and prezoning designations. No subsequent change may be made to the general plan for the annexed territory or zoning that is not in conformance to the prezoning designations for a period of two years after the completion of the annexation, unless the legislative body for the city makes a finding at a public hearing that a substantial change has occurred in circumstances that necessitate a departure from the prezoning in the application to the commission.

(f) With respect to the incorporation of a new city or the formation of a new special district, to determine the number of registered voters residing within the proposed city or special district or, for a landowner-voter special district, the number of owners of land and the assessed value of their land within the territory proposed to be included in the new special district. The number of registered voters shall be calculated as of the time of the last report of voter registration by the county elections official to the Secretary of State prior to the date the first signature was affixed to the petition. The executive officer shall notify the petitioners of the number of registered voters resulting from this calculation. The assessed value of the land within the territory proposed to be included in a new landowner-voter special district shall be calculated as shown on the last equalized assessment roll.

(g) To adopt written procedures for the evaluation of proposals. The commission may adopt standards for any of the factors enumerated in

Section 56668. Any standards adopted by the commission shall be written.

(h) To adopt standards and procedures for the evaluation of service plans submitted pursuant to Section 56653 and the initiation of a change of organization or reorganization pursuant to subdivision (a).

(i) To make and enforce regulations for the orderly and fair conduct of hearings by the commission.

(j) To incur usual and necessary expenses for the accomplishment of its functions.

(k) To appoint and assign staff personnel and to employ or contract for professional or consulting services to carry out and effect the functions of the commission.

(*l*) To review the boundaries of the territory involved in any proposal with respect to the definiteness and certainty of those boundaries, the nonconformance of proposed boundaries with lines of assessment or ownership, and other similar matters affecting the proposed boundaries.

(m) To waive the restrictions of Section 56744 if it finds that the application of the restrictions would be detrimental to the orderly development of the community and that the area that would be enclosed by the annexation or incorporation is so located that it cannot reasonably be annexed to another city or incorporated as a new city.

(n) To waive the application of Section 25210.90 or Section 22613 of the Streets and Highways Code if it finds the application would deprive an area of a service needed to ensure the health, safety, or welfare of the residents of the area and if it finds that the waiver would not affect the ability of a city to provide any service. However, within 60 days of the inclusion of the territory within the city, the legislative body may adopt a resolution nullifying the waiver.

(o) If the proposal includes the incorporation of a city, as defined in Section 56043, or the formation of a district, as defined in Section 2215 of the Revenue and Taxation Code, the commission shall determine the property tax revenue to be exchanged by the affected local agencies pursuant to Section 56810.

(p) To authorize a city or district to provide new or extended services outside its jurisdictional boundaries pursuant to Section 56133.

(q) To enter into an agreement with the commission for an adjoining county for the purpose of determining procedures for the consideration of proposals that may affect the adjoining county or where the jurisdiction of an affected agency crosses the boundary of the adjoining county.

SEC. 2. Section 56425 of the Government Code is amended to read:

56425. (a) In order to carry out its purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies so as to advantageously

provide for the present and future needs of the county and its communities, the commission shall develop and determine the sphere of influence of each local governmental agency within the county and enact policies designed to promote the logical and orderly development of areas within the sphere.

(b) At least 30 days prior to submitting an application to the commission for a determination of a new sphere of influence, or to update an existing sphere of influence for a city, representatives from the city shall meet with county representatives to discuss the proposed sphere, and its boundaries, and explore methods to reach agreement on the boundaries, development standards, and zoning requirements within the sphere to ensure that development within the sphere occurs in a manner that reflects the concerns of the affected city and is accomplished in a manner that promotes the logical and orderly development of areas within the sphere. If no agreement is reached between the city and county within 30 days, then the parties may, by mutual agreement, extend discussions for an additional period of 30 days. If an agreement is reached between the city and county regarding the boundaries, development standards, and zoning requirements within the proposed sphere, the agreement shall be forwarded to the commission, and the commission shall consider and adopt a sphere of influence for the city consistent with the policies adopted by the commission pursuant to this section, and the commission shall give great weight to the agreement in the commission's final determination of the city sphere.

(c) If the commission's final determination is consistent with the agreement reached between the city and county pursuant to subdivision (b), the agreement shall be adopted by both the city and county after a noticed public hearing. Once the agreement has been adopted by the affected local agencies and their respective general plans reflect that agreement, then any development approved by the county within the sphere shall be consistent with the terms of that agreement.

(d) If no agreement is reached pursuant to subdivision (b), the application may be submitted to the commission and the commission shall consider a sphere of influence for the city consistent with the policies adopted by the commission pursuant to this section.

(e) In determining the sphere of influence of each local agency, the commission shall consider and prepare a written statement of its determinations with respect to each of the following:

(1) The present and planned land uses in the area, including agricultural and open-space lands.

(2) The present and probable need for public facilities and services in the area.

(3) The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

(4) The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency.

(f) Upon determination of a sphere of influence, the commission shall adopt that sphere, and shall review and update, as necessary, the adopted sphere not less than once every five years.

(g) The commission may recommend governmental reorganizations to particular agencies in the county, using the spheres of influence as the basis for those recommendations. Those recommendations shall be made available, upon request, to other agencies or to the public. The commission shall make all reasonable efforts to ensure wide public dissemination of the recommendations.

(h) When adopting, amending, or updating a sphere of influence for a special district, the commission shall do all of the following:

(1) Require existing districts to file written statements with the commission specifying the functions or classes of services provided by those districts.

(2) Establish the nature, location, and extent of any functions or classes of services provided by existing districts.

(i) Subdivisions (b), (c), and (d) shall become inoperative as of January 1, 2007, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends that date.

SEC. 3. Section 56811 of the Government Code is repealed.

SEC. 4. Section 56811 is added to the Government Code, to read:

56811. (a) If a proposal includes the formation of a new special district, the commission shall determine the appropriations limit of the district in accordance with Section 7902.7 and Article XIII B of the California Constitution. The commission shall determine the provisional appropriations limit of the district in the following manner:

(1) Estimate the amount of revenue anticipated to be received by the district from the proceeds of taxes for the first full fiscal year of operation.

(2) Adjust the amount determined in paragraph (1) for the estimated change in the cost of living and population in the next full fiscal year of operation and any other changes that may be required or permitted by Article XIII B of the California Constitution.

(b) The governing body of the district shall determine the proposed permanent appropriations limit of the district to be submitted to the voters in the following manner:

(1) Determine the amount of revenue actually received by the district from the proceeds of taxes for the first full fiscal year of operation.

(2) Adjust the amount determined in paragraph (1) for the estimated change in the cost of living and population in the next full fiscal year of

operation and any other changes that may be required or permitted by Article XIII B of the California Constitution.

(c) The permanent appropriations limit of the district shall be set at the first district election that is held following the first full fiscal year of operation and shall not be considered to be a change in the appropriations limit of the city pursuant to Section 4 of Article XIII B of the California Constitution.

SEC. 5. Section 56820 of the Government Code is repealed.

SEC. 6. Section 56820.5 of the Government Code is repealed.

SEC. 7. Section 56820.7 of the Government Code is repealed.

SEC. 8. Section 56821 of the Government Code is amended to read:

56821. Either the commission or the legislative body of any independent special district within a county may adopt a resolution initiating proceedings as follows:

(a) It may propose representation of special districts upon the commission.

(b) It may propose the repeal of regulations affecting the functions and services of special districts.

SEC. 9. Section 56821.5 of the Government Code is amended to read:

56821.5. A certified copy of any resolution which has been adopted by an independent special district pursuant to subdivision (b) of Section 56821 shall be filed with the executive officer. If a resolution, or substantially identical resolution, has been filed by a majority of independent special districts within the county, then, not later than 35 days after the filing, the commission shall adopt a resolution of intention in accordance with the filed resolution or resolutions.

SEC. 10. Section 56821.7 of the Government Code is repealed.

SEC. 11. Section 56822 of the Government Code is amended to read.

56822. Whenever the commission, or the independent special districts, as the case may be, have complied with the applicable provisions of Sections 56821, 56821.1, 56821.3, and 56821.5, the commission shall adopt a resolution of intention pursuant to this section. The resolution of intention shall do all of the following:

(a) State whether the proceedings are initiated by the commission or by an independent special district or districts, in which case, the names of those districts shall be set forth.

(b) If the resolution of intention proposes only the repeal of regulations affecting the functions and services of special districts, it shall state that the commission proposes either of the following:

(1) To consider the proposal without reference to a special district advisory committee, in which case the resolution shall contain the text of the regulations proposed to be repealed.

(2) To refer the proposal to a special district advisory committee for study, report, and recommendation, in which case the resolution shall include the regulations proposed to be repealed.

In addition, the resolution of intention adopted pursuant to this subdivision shall also fix a time, not less than 15 or more than 35 days after the adoption of the resolution of intention, and the place of hearing by the commission on the question of whether the proposal made by the resolution should be disapproved, approved, and ordered without reference to a special district advisory committee, or referred to a special district advisory committee for study, report, and recommendation to the commission.

(c) If the resolution of intention proposes representation of special districts on the commission, it shall state that the commission proposes to refer the proposal to a special district advisory committee and the commission shall immediately order the proposal referred to that committee pursuant to Section 56823.

SEC. 12. Section 56824.1 of the Government Code is amended to read:

56824.1. Not later than 35 days after the filing with the executive officer of the report and recommendation of a special district advisory committee, the commission shall take one of the following actions:

(a) If the report concerns only the repeal of regulations affecting the functions and services of special districts, the commission may do either of the following:

(1) Disapprove the report without further notice and hearing.

(2) Adopt a resolution of intention to hold a hearing on the report pursuant to subdivision (c).

(b) If the report concerns a request for special district representation on the commission, the commission shall adopt a resolution declaring its intention to approve the report and recommendation.

(c) A resolution of intention shall do all of the following:

(1) Refer to the report and recommendation of the special district advisory committee, generally describe the nature and contents of the report and recommendation, and refer to the report and recommendation on file with the executive officer for a detailed description report and recommendation.

(2) Declare the intention of the commission to approve the recommendation and report, as filed.

(3) Fix a time, not less than 15 days, or more than 35 days, after the adoption of the resolution of intention, and the place of hearing by the commission, on the question of whether the report and recommendation filed by the special district advisory committee should be approved, either as filed or as ordered changed by the commission after notice and hearing.

SEC. 13. Section 56824.7 of the Government Code is amended to read:

56824.7. Any resolution approving the report and recommendation of a special district advisory committee, either as filed or as changed by the commission, shall order both of the following:

(a) The repeal of regulations, in accordance with the recommendations of the approved report.

(b) The chairperson of the commission to call and give notice of a meeting of the independent special district selection committee to be held within 15 days after the adoption of the resolution if special district representatives on the commission are to be selected pursuant to Section 56332.

SEC. 13.5. Article 1.5 (commencing with Section 56824.10) is added to Chapter 5 of Part 3 of Division 3 of Title 5 of the Government Code, to read:

Article 1.5. New or Different Services

56824.10. Commission proceedings for the exercise of new or different functions or classes of services by special districts may be initiated by a resolution of application in accordance with this article.

56824.12. (a) A proposal by a special district to provide a new or different function or class of services within its jurisdictional boundaries shall be made by the adoption of a resolution of application by the legislative body of the special district and shall include all of the matters specified for a petition in Section 56700, and be submitted with a plan for services prepared pursuant to Section 56653. The plan for services for purposes of this article shall also include all of the following information:

(1) The total estimated cost to provide the new or different function or class of services within the special district's jurisdictional boundaries.

(2) The estimated cost of the new or different function or class of services to customers within the special district's jurisdictional boundaries. The estimated costs may be identified by customer class.

(3) An identification of existing providers, if any, of the new or different function or class of services proposed to be provided and the potential fiscal impact to the customers of those existing providers.

(4) A plan for financing the establishment of the new or different function or class of services within the special district's jurisdictional boundaries.

(5) Alternatives for the establishment of the new or different functions or class of services within the special district's jurisdictional boundaries.

(b) The clerk of the legislative body adopting a resolution of application shall file a certified copy of that resolution with the executive officer. Except as provided in subdivision (c), the commission shall process resolutions of application adopted pursuant to this article in accordance with Section 56824.14.

(c) (1) Prior to submitting a resolution of application pursuant to this article to the commission, the legislative body of the special district shall conduct a public hearing on the resolution. Notice of the hearing shall be published pursuant to Sections 56153 and 56154.

(2) Any affected local agency, affected county, or any interested person who wishes to appear at the hearing shall be given an opportunity to provide oral or written testimony on the resolution.

56824.14. (a) The commission shall review and approve or disapprove with or without amendments, wholly, partially, or conditionally, proposals for the establishment of new or different functions or class of services within the jurisdictional boundaries of a special district after a public hearing called and held for that purpose.

(b) At least 21 days prior to the date of that hearing, the executive officer shall give mailed notice of the hearing to each affected local agency or affected county, and to any interested party who has filed a written request for notice with the executive officer. In addition, at least 21 days prior to the date of that hearing, the executive officer shall cause notice of the hearing to be published in accordance with Section 56153 in a newspaper of general circulation that is circulated within the territory affected by the proposal proposed to be adopted.

(c) The commission may continue from time to time any hearing called pursuant to this section. The commission shall hear and consider oral or written testimony presented by any affected local agency, affected county, or any interested person who appears at any hearing called and held pursuant to this section.

SEC. 14. Section 56834 of the Government Code is amended to read:

56834. From time to time during the course of study upon a proposed plan of reorganization, the commission may do any of the following:

(a) Extend the time for completion and submission of the report and recommendation of a reorganization committee.

(b) Change the scope of the study by the addition or deletion of territory or subject districts, except that the authority granted to a commission under this subdivision shall not apply to a change of organization or reorganization as described in subdivision (a) of Section 56853.

(c) Authorize the committee to develop, study, report, and make recommendations upon alternative plans of reorganization.

SEC. 15. Section 56853 of the Government Code is amended to read:

56853. (a) If a majority of the members of each of the legislative bodies of two or more local agencies adopt substantially similar resolutions of application making proposals either for the consolidation of districts or for the reorganization of all or any part of the districts into a single local agency, the commission shall approve, or conditionally approve, the proposal. The commission shall order the consolidation or reorganization without an election, except as otherwise provided in subdivision (b) of Section 57081.

(b) Except as provided in subdivision (d), a commission may order any material change in the provisions or the terms and conditions of the consolidation or reorganization, as set forth in the proposals of the local agencies. The commission shall direct the executive officer to give each subject agency mailed notice of any change prior to ordering a change. The commission shall not, without the written consent of all subject agencies, take any further action on the consolidation or reorganization for 30 days following that mailing. Upon written demand by any subject agency, filed with the executive officer during that 30-day period, the commission shall make determinations upon the proposals only after notice and hearing on the proposals. If no written demand is filed, the commission may make those determinations without notice and hearing. The application of any provision of this subdivision may be waived by consent of all of the subject agencies.

(c) Where the commission has initiated a change of organization or reorganization affecting more than one special district, the commission may utilize and is encouraged to utilize a reorganization committee to review the proposal.

(d) The commission shall not order a material change in the provisions of a consolidation or reorganization, as set forth in the proposals of the local agencies pursuant to subdivision (a), that would add or delete districts without the written consent of the applicant local agencies.

SEC. 16. Section 56863 of the Government Code is amended to read:

56863. (a) Within 35 days following the conclusion of a hearing on an original and an alternative proposal to form a subsidiary district, the commission shall adopt its resolution of determination, which shall do one of the following:

(1) Deny both the original proposal and the alternative proposal.

(2) Approve one proposal and deny the other.

(b) ''Alternative proposal,'' as used in this section, means an alternative proposal to a subsidiary district proposal as provided for in Section 56861.

SEC. 17. Section 56877 is added to the Government Code, to read:

56877. When a change of organization or a reorganization includes the annexation of inhabited territory to a district and the assessed value of land within the territory equals one-half or more of the assessed value of land within the district, or the number of registered voters residing within the territory equals one-half or more of the number of registered voters residing within the district, the commission may determine as a condition of the proposal that the change of organization or reorganization shall also be subject to confirmation by the voters in an election to be called, held, and conducted within the territory of the district to which annexation is proposed.

SEC. 18. Section 56886 of the Government Code is amended to read:

56886. Any change of organization or reorganization may provide for, or be made subject to one or more of, the following terms and conditions. However, none of the following terms and conditions shall directly regulate land use, property development, or subdivision requirements:

(a) The payment of a fixed or determinable amount of money, either as a lump sum or in installments, for the acquisition, transfer, use or right of use of all or any part of the existing property, real or personal, of any city, county, or district.

(b) The levying or fixing and the collection of any of the following, for the purpose of providing for any payment required pursuant to subdivision (a):

(1) Special, extraordinary, or additional taxes or assessments.

(2) Special, extraordinary, or additional service charges, rentals, or rates.

(3) Both taxes or assessments and service charges, rentals, or rates.

(c) The imposition, exemption, transfer, division, or apportionment, as among any affected cities, affected counties, affected districts, and affected territory of liability for payment of all or any part of principal, interest, and any other amounts which shall become due on account of all or any part of any outstanding or then authorized but thereafter issued bonds, including revenue bonds, or other contracts or obligations of any city, county, district, or any improvement district within a local agency, and the levying or fixing and the collection of any (1) taxes or assessments, or (2) service charges, rentals, or rates, or (3) both taxes or assessments and service charges, rentals, or rates, in the same manner as provided in the original authorization of the bonds and in the amount necessary to provide for that payment.

(d) If, as a result of any term or condition made pursuant to subdivision (c), the liability of any affected city, affected county, or affected district for payment of the principal of any bonded indebtedness

is increased or decreased, the term and condition may specify the amount, if any, of that increase or decrease which shall be included in, or excluded from, the outstanding bonded indebtedness of that entity for the purpose of the application of any statute or charter provision imposing a limitation upon the principal amount of outstanding bonded indebtedness of the entity.

(e) The formation of a new improvement district or districts or the annexation or detachment of territory to, or from, any existing improvement district or districts.

(f) The incurring of new indebtedness or liability by, or on behalf of, all or any part of any local agency, including territory being annexed to any local agency, or of any existing or proposed new improvement district within that local agency. The new indebtedness may be the obligation solely of territory to be annexed if the local agency has the authority to establish zones for incurring indebtedness. The indebtedness or liability shall be incurred substantially in accordance with the laws otherwise applicable to the local agency.

(g) The issuance and sale of any bonds, including authorized but unissued bonds of a local agency, either by that local agency or by a local agency designated as the successor to any local agency which is extinguished as a result of any change of organization or reorganization.

(h) The acquisition, improvement, disposition, sale, transfer, or division of any property, real or personal.

(i) The disposition, transfer, or division of any moneys or funds, including cash on hand and moneys due but uncollected, and any other obligations.

(j) The fixing and establishment of priorities of use, or right of use, of water, or capacity rights in any public improvements or facilities or any other property, real or personal. However, none of the terms and conditions ordered pursuant to this subdivision shall modify priorities of use, or right of use, to water, or capacity rights in any public improvements or facilities that have been fixed and established by a court or an order of the State Water Resources Control Board.

(k) The establishment, continuation, or termination of any office, department, or board, or the transfer, combining, consolidation, or separation of any offices, departments, or boards, or any of the functions of those offices, departments, or boards, if, and to the extent that, any of those matters is authorized by the principal act.

(*l*) The employment, transfer, or discharge of employees, the continuation, modification, or termination of existing employment contracts, civil service rights, seniority rights, retirement rights, and other employee benefits and rights.

(m) The designation of a city, county, or district, as the successor to any local agency which is extinguished as a result of any change of

organization or reorganization, for the purpose of succeeding to all of the rights, duties, and obligations of the extinguished local agency with respect to enforcement, performance, or payment of any outstanding bonds, including revenue bonds, or other contracts and obligations of the extinguished local agency.

(n) The designation of (1) the method for the selection of members of the legislative body of a district or (2) the number of those members, or (3) both, where the proceedings are for a consolidation, or a reorganization providing for a consolidation or formation of a new district and the principal act provides for alternative methods of that selection or for varying numbers of those members, or both.

(o) The initiation, conduct, or completion of proceedings on a proposal made under, and pursuant to, this division.

(p) The fixing of the effective date of any change of organization, subject to the limitations of Section 57202.

(q) Any terms and conditions authorized or required by the principal act with respect to any change of organization.

(r) The continuation or provision of any service provided at that time, or previously authorized to be provided by an official act of the local agency.

(s) The levying of assessments, including the imposition of a fee pursuant to Section 50029 or 66484.3 or the approval by the voters of general or special taxes. For the purposes of this section, imposition of a fee as a condition of the issuance of a building permit does not constitute direct regulation of land use, property development, or subdivision requirements.

(t) The extension or continuation of any previously authorized charge, fee, assessment, or tax by the local agency or a successor local agency in the affected territory.

(u) The transfer of authority and responsibility among any affected cities, affected counties, and affected districts for the administration of special tax and special assessment districts, including, but not limited to, the levying and collecting of special taxes and special assessments, including the determination of the annual special tax rate within authorized limits; the management of redemption, reserve, special reserve, and construction funds; the issuance of bonds which are authorized but not yet issued at the time of the transfer, including not yet issued portions or phases of bonds which are authorized; supervision of construction paid for with bond or special tax or assessment proceeds; administration of agreements to acquire public facilities and reimburse advances made to the district; and all other rights and responsibilities with respect to the levies, bonds, funds, and use of proceeds that would have applied to the local agency that created the special tax or special assessment district.

(v) Any other matters necessary or incidental to any of the terms and conditions specified in this section.

SEC. 19. Section 57114 of the Government Code is amended to read:

57114. (a) Notwithstanding Section 56854 and Section 57089, for any proposal for the dissolution of one or more districts and the annexation of all or substantially all of their territory to another district, not initiated by the commission pursuant to subdivision (a) of Section 56375, the commission shall forward the change of organization or reorganization for confirmation by the voters if the commission finds either of the following:

(1) In the case of inhabited territory, that a petition requesting that the proposal be submitted to confirmation by the voters has been signed by either of the following:

(A) At least 25 percent of the number of landowners within any affected district within the affected territory who own at least 25 percent of the assessed value of land within the territory.

(B) At least 25 percent of the voters entitled to vote as a result of residing within, or owning land within, any affected district within the affected territory.

(2) In the case of a landowner-voter district, that the territory is uninhabited and a petition requesting that the proposal be submitted to confirmation by the voters has been signed by at least 25 percent of the number of landowners within any affected district within the affected territory, owning at least 25 percent of the assessed value of land within the territory of that district.

(b) If a petition that meets the requirements of this section has been filed, the commission shall approve the proposal subject to confirmation by the voters of each district that has filed such a petition. The voter confirmation requirements set forth in subdivision (a) shall not apply to any proposal initiated by the commission under Section 56375 or where each affected district has consented to the proposal by a resolution adopted by a majority vote of its board of directors.

SEC. 19.5. Section 57114 of the Government Code is amended to read:

57114. (a) Notwithstanding Sections 56854 and 57111, for any proposal for the dissolution of one or more districts and the annexation of all or substantially all of their territory to another district, not initiated by the commission pursuant to subdivision (a) of Section 56375, the commission shall forward the change of organization or reorganization for confirmation by the voters if the commission finds either of the following:

(1) In the case of inhabited territory, that a petition requesting that the proposal be submitted to confirmation by the voters has been signed by either of the following:

(A) At least 25 percent of the number of landowners within any affected district within the affected territory who own at least 25 percent of the assessed value of land within the territory.

(B) At least 25 percent of the voters entitled to vote as a result of residing within, or owning land within, any affected district within the affected territory.

(2) In the case of a landowner-voter district, that the territory is uninhabited and a petition requesting that the proposal be submitted to confirmation by the voters has been signed by at least 25 percent of the number of landowners within any affected district within the affected territory, owning at least 25 percent of the assessed value of land within the territory of that district.

(b) If a petition that meets the requirements of this section has been filed, the commission shall approve the proposal subject to confirmation by the voters of each district that has filed such a petition. The voter confirmation requirements set forth in subdivision (a) shall not apply to any proposal initiated by the commission under Section 56375 or where each affected district has consented to the proposal by a resolution adopted by a majority vote of its board of directors.

SEC. 20. Section 19.5 of this bill incorporates amendments to Section 57114 of the Government Code proposed by both this bill and AB 720. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 57114 of the Government Code, and (3) this bill is enacted after AB 720, in which case Section 19 of this bill shall not become operative.

SEC. 21. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 668

An act to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 12206 of the Revenue and Taxation Code is amended to read:

12206. (a) (1) There shall be allowed as a credit against the ''tax'' (as defined by Section 12201) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code, except as otherwise provided in this section.

(2) ''Taxpayer,'' for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) ''Housing sponsor,'' for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to Section 42(d)(5)(C) of the Internal Revenue Code, unless the committee reduces the amount of federal credit, with the approval of the applicant, so that the combined amount of federal and state credit shall not exceed the total credit allowable pursuant to this section and Section 42(b) of the Internal Revenue Code, computed without regard to Section 42(d)(5)(C) of the Internal Revenue Code.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term ''applicable percentage'' means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A) of the Internal Revenue Code.

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is ''at risk of conversion,'' the term ''applicable percentage'' means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(3) For purposes of this section, the term "at risk of conversion,'' with respect to an existing building means a building that satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the mortgage on the building is eligible for incentives under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987 or under Section 502(c)

of the Housing Act of 1949, anytime in the two calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term ''qualified low-income housing project'' as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note.

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period.

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the ''floor space fraction,'' as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term ''credit period'' as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting ''four taxable years'' for ''10 taxable years.''

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the taxable years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 17058, and Section 23610.5 shall be an amount equal to the sum of all the following:

(1) Seventy million dollars ($70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars ($70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term ''Consumer Price Index'' means the last Consumer Price Index for all urban consumers published by the federal Department of Labor.

(2) The unused housing credit ceiling, if any, for the preceding calendar years.

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a

qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term ''compliance period'' as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30-consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.

(i) (1) Section 42(j) of the Internal Revenue Code shall not be applicable and the provisions in paragraph (2) shall be substituted in its place.

(2) The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code, shall apply, providing the agreement includes all of the following provisions:

(A) A term not less than the compliance period.

(B) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(C) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(G) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the

regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(H) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need and demand for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and that the proposed operating income shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if both of the following apply:

(i) The project serves the lowest income tenants at rents affordable to those tenants.

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee, of all residential units is comprised of low-income units with three and more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are ''at risk of conversion,'' as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term ''secretary'' shall be replaced by the term ''California Franchise Tax Board.''

(*l*) In the case where the state credit allowed under this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1993.

(n) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(o) This section shall remain in effect for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect.

SEC. 2. Section 17058 of the Revenue and Taxation Code is amended to read:

17058. (a) (1) There shall be allowed as a credit against the amount of net tax (as defined in Section 17039) a state low-income housing credit in an amount equal to the amount determined in subdivision (c), computed in accordance with the provisions of Section 42 of the Internal Revenue Code, except as otherwise provided in this section.

(2) ''Taxpayer'' for purposes of this section means the sole owner in the case of an individual, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) ''Housing sponsor'' for purposes of this section means the sole owner in the case of an individual, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall, upon request, provide a copy of the certification to the Franchise Tax Board.

(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(E) For buildings located in designated difficult development areas or qualified census tracts as defined in Section 42(d)(5)(C) of the Internal Revenue Code, credits may be allocated under this section in the amounts prescribed in subdivision (c), provided that the amount of credit allocated under Section 42 of the Internal Revenue Code is computed on 100 percent of the qualified basis of the building.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term ''applicable percentage'' means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term ''applicable percentage'' means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A) of the Internal Revenue Code.

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is ''at risk of conversion,'' the term ''applicable percentage'' means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building that satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the building is eligible for incentives under Subtitle 13 of the Emergency Low Income Housing Preservation Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the two calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term ''qualified low-income housing project'' as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, that, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity that shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note.

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period.

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the ''floor space fraction,'' as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may be accumulated and distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term ''credit period'' as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four taxable years'' for ''10 taxable years.''

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the taxable year in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable to this section.

(g) The aggregate housing credit dollar amount which may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 23610.5 shall be an amount equal to the sum of all the following:

(1) Seventy million dollars ($70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars ($70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term ''Consumer Price Index'' means the last

Consumer Price Index for all urban consumers published by the federal Department of Labor.

(2) The unused housing credit ceiling, if any, for the preceding calendar years.

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term ''compliance period'' as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, providing the agreement includes all of the following provisions:

(1) A term not less than the compliance period.

(2) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(6) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(7) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(8) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling that may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need and demand for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and that the proposed

operating income shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if both of the following apply:

(i) The project serves the lowest income tenants at rents affordable to those tenants.

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee of all residential units is comprised of low-income units with three and more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are ''at risk of conversion,'' as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term ''secretary'' shall be replaced by the term ''California Franchise Tax Board.''

(*l*) In the case where the credit allowed under this section exceeds the net tax, the excess credit may be carried over to reduce the net tax in the following year, and succeeding taxable years, if necessary, until the credit has been exhausted.

(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(q) Any unused credit may continue to be carried forward, as provided in subdivision (*l*), until the credit has been exhausted.

This section shall remain in effect on and after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect.

(r) The amendments to this section by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1994.

SEC. 3. Section 23610.5 of the Revenue and Taxation Code is amended to read:

23610.5. (a) (1) There shall be allowed as a credit against the ''tax'' (as defined by Section 23036) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c),

computed in accordance with Section 42 of the Internal Revenue Code of 1986, except as otherwise provided in this section.

(2) ''Taxpayer,'' for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) ''Housing sponsor,'' for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor has been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It qualifies for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall, upon request, provide a copy of the certification to the Franchise Tax Board.

(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(E) For buildings located in designated difficult development areas or qualified census tracts as defined in Section 42(d)(5)(C) of the Internal Revenue Code, credits may be allocated under this section in the amounts prescribed in subdivision (c), provided that the amount of credit allocated under Section 42 of the Internal Revenue Code is computed on 100 percent of the qualified basis of the building.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term ''applicable percentage'' means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term ''applicable percentage'' means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is ''at risk of conversion,'' the term ''applicable percentage'' means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion,'' with respect to an existing building means a building that satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the building is eligible for prepayment under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the two calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term ''qualified low-income housing project'' as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, shall be equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity, which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note.

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period.

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the ''floor space fraction,'' as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed at any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term ''credit period'' as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four taxable years'' for ''10 taxable years.''

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for

the four-year period beginning with the later of the taxable years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 17058 shall be an amount equal to the sum of all the following:

(1) Seventy million dollars ($70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars ($70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term ''Consumer Price Index'' means the last Consumer Price Index for all urban consumers published by the federal Department of Labor.

(2) The unused housing credit ceiling, if any, for the preceding calendar years.

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term ''compliance period'' as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and this agreement shall be subordinated, when

required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, provided that the agreement includes all of the following provisions:

(1) A term not less than the compliance period.

(2) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto, and that allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building the right to enforce the regulatory agreement in any state court.

(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(6) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(7) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(8) A provision that the remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of

federal and state low-income housing tax credit ceiling that may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate that there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if both of the following apply:

(i) The project serves the lowest income tenants at rents affordable to those tenants.

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee, of all residential units are low-income units with three and more bedrooms.

(ii) Projects providing single-room occupancy units serving very low income tenants.

(iii) Existing projects that are ''at risk of conversion,'' as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section, Section 12206, and Section 17058 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term ''secretary'' shall be replaced by the term ''California Franchise Tax Board.''

(*l*) In the case where the state credit allowed under this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(q) (1) A corporation may elect to assign any portion of any credit allowed under this section to one or more affiliated corporations for each taxable year in which the credit is allowed. For purposes of this subdivision, ''affiliated corporation'' has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last day of the taxable year in which the credit is allowed, except that ''100 percent'' is substituted for ''more than 50 percent'' wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993, and ''voting common stock'' is substituted for ''voting stock'' wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993.

(2) The election provided in paragraph (1):

(A) May be based on any method selected by the corporation that originally receives the credit.

(B) Shall be irrevocable for the taxable year the credit is allowed, once made.

(C) May be changed for any subsequent taxable year if the election to make the assignment is expressly shown on each of the returns of the affiliated corporations that assign and receive the credits.

(r) Any unused credit may continue to be carried forward, as provided in subdivision (k), until the credit has been exhausted.

This section shall remain in effect on or after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect.

(s) The amendments to this section made by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1994, except that paragraph (1) of subdivision (q), as amended, shall apply to taxable years beginning on or after January 1, 1993.

SEC. 4. The California Tax Credit Allocation Committee shall review and evaluate the geographic apportionment methodology of the low-income housing tax credit program, taking into account, among other things, an equitable distribution of tax credits in accordance with regional and local housing needs, and shall report back to the Legislature no later than June 30, 2002.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 669

An act to add Section 21015.6 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 21015.6 is added to the Revenue and Taxation Code, to read:

21015.6. (a) No levy may be made on the principal residence of any innocent investor or the proceeds from the sale or other transaction involving the principal residence of an innocent investor upon notification to the Franchise Tax Board that the residence is the principal residence of an innocent investor and substantiation of both of the following:

(1) The basis for that levy is an underpayment of any tax imposed under Part 10 (commencing with Section 17001) for any taxable year ending on or before December 31, 2000, that is attributable to an abusive tax shelter.

(2) The principal residence is owned by an innocent investor.

(b) Any state tax lien recorded under Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, including a state tax lien described under Section 522(c)(2)(B) of Title

11 of the United States Code, relating to state tax liens after bankruptcy, on the principal residence of an innocent investor shall be released without satisfaction of the lien upon notification to the Franchise Tax Board that the residence is the principal residence of an innocent investor and substantiation of both of the following:

(1) The basis for that lien is an underpayment of any tax imposed under Part 10 (commencing with Section 17001) for any taxable year ending on or before December 31, 2000, that is attributable to an abusive tax shelter.

(2) The owner of that principal residence is an innocent investor.

(c) For purposes of this section:

(1) ''Abusive tax shelter'' shall satisfy both of the following requirements:

(A) Be a potentially abusive tax shelter within the meaning of Section 6112 of the Internal Revenue Code.

(B) With respect to which either of the following has occurred:

(i) The Internal Revenue Service has imposed a penalty under Section 6700 or 6701 of the Internal Revenue Code.

(ii) The Franchise Tax Board has imposed a penalty under Section 19177 or 19178.

(2) ''Innocent investor'' means any individual (or the spouse or former spouse of that individual) that satisfies each of the following requirements:

(A) Is liable for underpayment of any tax imposed under Part 10 (commencing with Section 17001) for any taxable year ending on or before December 31, 2000, that is attributable to ownership of an interest in an abusive tax shelter.

(B) Had no responsibility for the creation, promotion, operation, management, or control of the abusive tax shelter.

(C) During the tax years to which the underpayment described in subparagraph (A) relates, reasonably believed that the tax treatment of an item attributable to an abusive tax shelter was, more likely than not, the proper tax treatment.

(3) ''Principal residence'' includes any property that qualifies as a declared homestead as defined in Section 704.910 of the Code of Civil Procedure.

(d) Notification required by this section shall be made in the manner prescribed in forms and instructions of the Franchise Tax Board.

(e) (1) If, after January 1, 2002, the Franchise Tax Board has received proceeds from the sale of a principal residence by either levy or the satisfaction of a lien, the amounts received shall be returned to the owner upon notification to the Franchise Tax Board that the residence was the principal residence of an innocent investor and substantiation as specified in subdivision (a) or (b). The notification shall be made in

writing and shall be considered a request for the return of the proceeds from the sale of the principal residence.

(2) If the Franchise Tax Board fails to mail notice of denial of the request for the return of the proceeds from the sale of the principal residence within six months after the date the request was submitted, the owner may, prior to the mailing of the notice of denial of the request, consider the request denied and may, in accordance with subdivision (f), bring an action against the Franchise Tax Board for the return of the proceeds from the sale of the principal residence.

(3) Amounts returned pursuant to paragraph (1) shall include interest at the adjusted annual rate established under Section 19521 from the date the amounts are received by the Franchise Tax Board until the date the amounts are returned.

(4) Any amounts required to be returned pursuant to this subdivision shall first be credited against any amount then due from the owner (other than an underpayment of tax described in subparagraph (A) of paragraph (2) of subdivision (c)) and the balance, if any, shall be returned to the owner.

(5) No amount may be credited or returned pursuant to this subdivision unless the notification and substantiation described in paragraph (1) occur before the expiration of the one-year period beginning on the date the proceeds are received by the Franchise Tax Board.

(f) (1) If the Franchise Tax Board denies a request for the return of the proceeds from the sale of a principal residence, the owner of the residence may bring an action against the Franchise Tax Board for the return, in whole or in part, of the proceeds the Franchise Tax Board received by levy or in satisfaction of a lien.

(2) The action described in paragraph (1) must be filed within one year from the date the proceeds are received by the Franchise Tax Board or within 90 days after the Franchise Tax Board notifies the owner of the denial of his or her request for the return of the proceeds from the sale of the principal residence, whichever period expires later.

(3) Except as otherwise provided in this subdivision, an action brought pursuant to this subdivision shall be governed by the provisions of law applicable to an action authorized under Section 19382.

CHAPTER 670

An act to amend Section 11125.1 of the Government Code, and to amend Sections 7081 and 21002 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 9, 2001. Filed with
Secretary of State October 10, 2001.]

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

SECTION 1. Section 11125.1 of the Government Code is amended to read:

11125.1. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are distributed to members of the state body by board staff or individual members prior to or during a meeting shall be: (1) made available for public inspection at that meeting, (2) distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125, and (3) made available on the Internet.

(d) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6257. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(e) ''Writing'' for purposes of this section means ''writing'' as defined under Section 6252.

SEC. 2. Section 7081 of the Revenue and Taxation Code is amended to read:

7081. The Legislature finds and declares that taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. It is the intent of the Legislature to place guarantees in California law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes.

The Legislature further finds that the California tax system is based largely on voluntary compliance, and the development of understandable tax laws and taxpayers informed of those laws will improve both voluntary compliance and the relationship between taxpayers and government. It is the further intent of the Legislature to promote improved voluntary taxpayer compliance by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws.

The Legislature further finds and declares that the purpose of any tax proceeding between the State Board of Equalization and a taxpayer is the determination of the taxpayer's correct amount of tax liability. It is the intent of the Legislature that, in furtherance of this purpose, the State Board of Equalization may inquire into, and shall allow the taxpayer every opportunity to present, all relevant information pertaining to the taxpayer's liability.

SEC. 3. Section 21002 of the Revenue and Taxation Code is amended to read:

21002. The Legislature finds and declares that taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. It is the intent of the Legislature to place guarantees in California law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes.

The Legislature further finds that the California tax system is based largely on self-assessment, and the development of understandable tax laws and taxpayers informed of those laws will improve both self-assessment and the relationship between taxpayers and government. It is the further intent of the Legislature to promote improved taxpayer self-assessment by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws.

The Legislature further finds and declares that the purpose of any tax proceeding between the Franchise Tax Board and a taxpayer is the

determination of the taxpayer's correct tax liability. It is the intent of the Legislature that, in the furtherance of this purpose, the Franchise Tax Board may inquire into, and shall allow the taxpayer every opportunity to present, all relevant information pertaining to the taxpayer's liability.

CHAPTER 671

An act to amend Sections 65008 and 65583 of the Government Code, relating to housing.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. It is the intent of the Legislature in enacting this act only to clarify existing state requirements and not to establish any new reimbursable state mandate.

SEC. 1.5. Section 65008 of the Government Code is amended to read:

65008. (a) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:

(1) The race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the individual or group of individuals. For purposes of this section, both of the following definitions apply:

(A) ''Familial status'' as defined in Section 12955.2.

(B) ''Disability'' as defined in Section 12955.3.

(2) The method of financing of any residential development of the individual or group of individuals.

(3) The intended occupancy of any residential development by persons or families of low, moderate, or middle income.

(b) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to this title, prohibit or discriminate against any residential development or emergency shelter because of the method of financing or the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the owners or intended occupants of the residential development or emergency shelter.

(c) (1) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to this title, prohibit or discriminate against a residential development or emergency shelter because the development or shelter is intended for occupancy by persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income.

(2) For the purposes of this section, ''persons and families of middle income'' means persons and families whose income does not exceed 150 percent of the median income for the county in which the persons or families reside.

(d) (1) No city, county, city and county, or other local governmental agency may impose different requirements on a residential development or emergency shelter that is subsidized, financed, insured, or otherwise assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, than those imposed on nonassisted developments, except as provided in subdivision (e).

(2) No city, county, city and county, or other local governmental agency may, because of the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the intended occupants, or because the development is intended for occupancy by persons and families of low, moderate, or middle income, impose different requirements on these residential developments than those imposed on developments generally, except as provided in subdivision (e).

(e) Notwithstanding subdivisions (a) to (d), inclusive, nothing in this section or this title shall be construed to prohibit either of the following:

(1) The County of Riverside from enacting and enforcing zoning to provide housing for older persons, in accordance with state or federal law, if that zoning was enacted prior to January 1, 1995.

(2) Any city, county, or city and county from extending preferential treatment to residential developments or emergency shelters assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, or other residential developments or emergency shelters intended for occupancy by persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, or agricultural employees, as defined in subdivision (b) of Section 1140.4 of the Labor Code, and their families. This preferential treatment may include, but need not be limited to, reduction or waiver of fees or changes in architectural requirements, site development and property line requirements, building setback requirements, or vehicle parking requirements that reduce development costs of these developments.

(f) ''Residential development,'' as used in this section, means a single-family residence or a multifamily residence, including manufactured homes, as defined in Section 18007 of the Health and Safety Code.

(g) This section shall apply to chartered cities.

(h) The Legislature finds and declares that discriminatory practices that inhibit the development of housing for persons and families of low, moderate, and middle income, or emergency shelters for the homeless, are a matter of statewide concern.

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

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

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

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

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

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

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels and for persons with disabilities as identified in the analysis pursuant to paragraph (4) of subdivision (a), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584

and from meeting the need for housing for persons with disabilities identified pursuant to paragraph (6).

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

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

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

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

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

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

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

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing

developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

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

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

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

(i) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low and low-income households.

(ii) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(B) For purposes of this paragraph, the phrase ''use by right'' shall mean the use does not require a conditional use permit, except when the proposed project is a mixed-use project involving both commercial or industrial uses and residential uses. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(C) The requirements of this subdivision regarding identification of sites for farmworker housing shall apply commencing with the next revision of housing elements required by Section 65588 following the enactment of this subparagraph.

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

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

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

(6) (A) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local

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

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

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

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

CHAPTER 672

An act to add Section 8169.6 to the Government Code, relating to state public works.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 8169.6 is added to the Government Code, to read:

8169.6. (a) In furtherance of the Capitol Area Plan, the objectives of Resolution Chapter 131 of the Statutes of 1991, and the legislative findings and declarations contained in Chapter 193 of the Statutes of 1996, relative to the findings by the Urban Land Institute, the director may purchase, exchange, or otherwise acquire real property and construct facilities, including any improvements, betterments, and related facilities, within the jurisdiction of the Capitol Area Plan in the

City of Sacramento pursuant to this section. The total authorized scope of the project shall consist of approximately 1,400,000 gross square feet of office space on state-owned land in the Capitol area in downtown Sacramento on Block 204 (bounded by 7th, 8th, O, and P Streets) or Block 203 (bounded by 7th, 8th, N, and O Streets, or both of those blocks). The project will include associated parking onsite and in a parking garage to be constructed on Block 266 (bounded by 8th, 9th, Q, and R Streets). The project cost shall include the cost of rehabilitation of the Heilbron House currently located on Block 204, and the project cost may include the cost of relocation of the Heilbron House.

(b) (1) The department may contract for the lease, lease-purchase, lease with an option to purchase, acquisition, design, design-build, construction, construction management, and other services related to the design and construction of the office and parking facilities. The State Public Works Board may issue revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to Chapter 5 (commencing with Section 15830) of Part 10b of Division 3 to finance all costs associated with the acquisition, design, and construction of office and parking facilities for the purposes of this section. The State Public Works Board and the department may borrow funds for project costs from the Pooled Money Investment Account pursuant to Sections 16312 and 16313. In the event the bonds authorized by the project are not sold, the tenant state agencies identified for the building, as determined by the Department of Finance, shall commit a sufficient amount of their support appropriations to repay any loans made for the project from the Pooled Money Investment Account. It is the intent of the Legislature that this commitment shall be included in future Budget Acts until all outstanding loans from the Pooled Money Investment Account are repaid either through the proceeds from the sale of bonds or from an appropriation.

(2) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold may equal, but shall not exceed, the cost of planning, preliminary plans, working drawings, construction, construction management and supervision, other costs relating to the design and construction of the facilities, and any additional sums necessary to pay interim and permanent financing costs. The additional amount may include interest and a reasonable required reserve fund.

(3) Authorized costs of the facilities for preliminary plans, working drawings, demolition, construction, and other costs shall not exceed three hundred ninety-one million dollars ($391,000,000). Notwithstanding Section 13332.11, the State Public Works Board may authorize the augmentation of the amount authorized under this paragraph by up to 10 percent of the amount authorized.

(4) The net present value of the cost to acquire and operate the facilities authorized by subdivision (a) may not exceed the net present value of the cost to lease and operate an equivalent amount of comparable consolidated office space over the same time period. The department shall perform this analysis and shall obtain interest rates, discount rates, and Consumer Price Index figures from the Treasurer. For purposes of this analysis, the department shall compare the cost of acquiring and operating the proposed facilities with the avoided cost of leasing and operating an equivalent amount of comparable consolidated office space that would no longer need to be leased.

(5) The director may execute and deliver a contract with the State Public Works Board for the lease of the facilities described in this section that are financed with the proceeds of the board's bonds, notes, or bond anticipation notes issued in accordance with this section.

CHAPTER 673

An act to amend Section 1102.6b of the Civil Code, and to amend Section 53340.2 of, and to add Section 53754 to, the Government Code, relating to real estate disclosure.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 1102.6b of the Civil Code is amended to read:

1102.6b. (a) This section applies to all transfers of real property for which all of the following apply:

(1) The transfer is subject to this article.

(2) The property being transferred is subject to a continuing lien securing the levy of special taxes pursuant to the Mello-Roos Community Facilities Act (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) or to a fixed lien assessment collected in installments to secure bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).

(3) A notice is not required pursuant to Section 53341.5 of the Government Code.

(b) In addition to any other disclosure required pursuant to this article, the seller of any real property subject to this section shall make a good faith effort to obtain a disclosure notice concerning the special tax as provided for in Section 53340.2 of the Government Code, or a disclosure

notice concerning an assessment installment as provided in Section 53754 of the Government Code, from each local agency that levies a special tax pursuant to the Mello-Roos Community Facilities Act, or that collects assessment installments to secure bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), on the property being transferred, and shall deliver that notice or those notices to the prospective purchaser, as long as the notices are made available by the local agency.

(c) If a disclosure received pursuant to subdivision (b) has been delivered to the transferee, a seller or his or her agent is not required to provide additional information concerning, and information in the disclosure shall be deemed to satisfy the responsibility of the seller or his or her agent to inform the transferee regarding the special tax or assessment installments and the district. Notwithstanding subdivision (b), nothing in this section imposes a duty to discover a special tax or assessment installments or the existence of any levying district not actually known to the agents.

SEC. 2. Section 53340.2 of the Government Code is amended to read:

53340.2. (a) The legislative body levying the special tax shall designate an office, department, or bureau of the local agency which shall be responsible for annually preparing the current roll of special tax levy obligations by assessor's parcel number on nonexempt property within the district and which will be responsible for estimating future special tax levies. The designated office, department, or bureau shall be the same office, department, or bureau that prepares the ''NOTICE OF ASSESSMENT'' required by Section 53754. If notice is required under both this section and Section 53754, the notices shall, to the extent feasible, be combined into a single notice document. The designated office, department, or bureau shall establish procedures to promptly respond to inquiries concerning current and future estimated tax liability. Neither the designated office, department, or bureau, nor the legislative body, shall be liable if any estimate of future tax liability is inaccurate, nor for any failure of any seller to request a Notice of Special Tax or to provide the notice to a buyer.

(b) For purposes of enabling sellers of real property subject to the levy of special taxes to satisfy the notice requirements of subdivision (b) of Section 1102.6 of the Civil Code, the designated office, department, or bureau shall furnish a Notice of Special Tax to any individual requesting the notice or any owner of property subject to a special tax levied by the local agency within five working days of receiving a request for such notice. The local agency may charge a reasonable fee for this service not to exceed ten dollars ($10.00).

(c) The notice shall contain the heading ''NOTICE OF SPECIAL TAX'' in type no smaller than 8-point type, and shall be in substantially the following form. The form may be modified as needed to clearly and accurately describe the tax structure and other characteristics of districts created before January 1, 1993, or to clearly and accurately consolidate information about the tax structure and other characteristics of two or more districts that levy or are authorized to levy special taxes with respect to the lot, parcel, or unit. The notice shall be completed by the designated office, department, or bureau except for the signatures and date of signing:

NOTICE OF SPECIAL TAX

COMMUNITY FACILITIES DISTRICT NO. ____
COUNTY OF _____, CALIFORNIA
TO: THE PROSPECTIVE PURCHASER OF THE REAL PROPERTY KNOWN AS:

_____
_____

THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR PURCHASING THIS PROPERTY.

This property is subject to a special tax, which is in addition to the regular property taxes and any other charges and benefit assessments on the parcel. This special tax may not be imposed on all parcels within the city or county where the property is located. If you fail to pay this tax when due each year, the property may be foreclosed upon and sold. The tax is used to provide public facilities or services that are likely to particularly benefit the property. YOU SHOULD TAKE THIS TAX AND THE BENEFITS FROM THE PUBLIC FACILITIES AND SERVICES FOR WHICH IT PAYS INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS PROPERTY.

(2) The maximum special tax which may be levied against this parcel to pay for public facilities is $____ during the ____–__ tax year. This amount will increase by __ percent per year after that (if applicable). The special tax will be levied each year until all of the authorized facilities are built and all special tax bonds are repaid, but in any case not after the ____–__ tax year.

An additional special tax will be used to pay for ongoing services, if applicable. The maximum amount of this tax is ____ dollars ($____) during the ____–__ tax year. This amount may increase by ____, if applicable, and may be levied until the ____–__ tax year (or forever, as applicable).

(3) The authorized facilities which are being paid for by the special taxes, and by the money received from the sale of bonds which are being repaid by the special taxes, are:

These facilities may not yet have all been constructed or acquired and it is possible that some may never be constructed or acquired.

In addition, the special taxes may be used to pay for costs of the following services:

YOU MAY OBTAIN A COPY OF THE RESOLUTION OF FORMATION WHICH AUTHORIZED CREATION OF THE COMMUNITY FACILITIES DISTRICT, AND WHICH SPECIFIES MORE PRECISELY HOW THE SPECIAL TAX IS APPORTIONED AND HOW THE PROCEEDS OF THE TAX WILL BE USED, FROM THE _____ (name of jurisdiction) BY CALLING _____ (telephone number). THERE MAY BE A CHARGE FOR THIS DOCUMENT NOT TO EXCEED THE ESTIMATED REASONABLE COST OF PROVIDING THE DOCUMENT.

I (WE) ACKNOWLEDGE THAT I (WE) HAVE RECEIVED A COPY OF THIS NOTICE. I (WE) UNDERSTAND THAT I (WE) MAY TERMINATE THE CONTRACT TO PURCHASE OR DEPOSIT RECEIPT AFTER RECEIVING THIS NOTICE FROM THE OWNER OR AGENT SELLING THE PROPERTY. THE CONTRACT MAY BE TERMINATED WITHIN THREE DAYS IF THE NOTICE WAS RECEIVED IN PERSON OR WITHIN FIVE DAYS AFTER IT WAS DEPOSITED IN THE MAIL BY GIVING WRITTEN NOTICE OF THAT TERMINATION TO THE OWNER OR AGENT SELLING THE PROPERTY.

DATE: _____

_____

_____

SEC. 3. Section 53754 is added to the Government Code, to read:

53754. (a) The legislative body collecting assessment installments to secure bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) shall designate an office, department, or bureau of the local agency that shall be responsible for annually preparing the current tax roll of assessment installment obligations by assessor's parcel number on property within the assessment district. The designated office, department, or bureau shall be the same office, department, or bureau that prepares the ''NOTICE OF SPECIAL TAX'' required by

Section 53340.2. If notice is required under both this section and Section 53340.2, the notices shall, to the extent feasible, be combined into a single notice document. The designated office, department, or bureau shall establish procedures to promptly respond to inquiries concerning installments on the current tax roll. Neither the designated office, department, or bureau, nor the legislative body, shall be liable if any estimate of assessment installments on the current tax roll is inaccurate, nor for any failure of any seller to request a Notice of Special Assessment or to provide the notice to a buyer.

(b) For purposes of enabling sellers of real property subject to the levy of assessments to satisfy the notice requirements of subdivision (b) of Section 1102.6 of the Civil Code, the designated office, department, or bureau shall furnish a Notice of Assessment to any individual requesting the notice or any owner of property subject to an assessment levied by the local agency within five working days of receiving a request for such notice. The local agency may charge a reasonable fee for this service not to exceed ten dollars ($10).

(c) The notice shall contain the heading ''NOTICE OF SPECIAL ASSESSMENT'' in type no smaller than 8-point type, and shall be in substantially the following form. The form may be modified as needed to clearly and accurately present the required information or to consolidate information about two or more assessment districts that collect installments of assessments with respect to the lot, parcel, or unit. The notice shall be completed by the designated office, department, or bureau except for the signatures and date of signing:

NOTICE OF SPECIAL ASSESSMENT

ASSESSMENT DISTRICT NO.____ OF

(CITY) (COUNTY) (SPECIAL DISTRICT), CALIFORNIA

TO: THE PROSPECTIVE PURCHASER OF THE REAL PROPERTY KNOWN AS:

Assessor's Parcel Number:____
Street Address:_____
_____.

THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR PURCHASING THIS PROPERTY.

This property is within the above-named assessment district. The assessment district has issued bonds to finance the acquisition or

construction of certain public improvements that are of direct and special benefit to property within the assessment district. The bonds will be repaid from annual assessment installments on property within the assessment district.

This property is subject to annual assessment installments of the assessment district that will appear on your property tax bills, but which are in addition to the regular property taxes and any other charges and levies that will be listed on the property tax bill. If you fail to pay assessment installments when due each year, the property may be foreclosed upon and sold.

The annual assessment installment against this property as shown on the most recent tax bill for the ____-____ tax year is ____ dollars ($____). Assessment installments will be collected each year until the assessment bonds are repaid.

The public facilities that are being paid for by the money received from the sale of bonds that are being repaid by the assessments, are:

(LIST)

These facilities may not yet have all been constructed or acquired and it is possible that some may never be constructed or acquired.
YOU SHOULD TAKE THIS ASSESSMENT AND THE BENEFITS FROM THE PUBLIC FACILITIES FOR WHICH IT PAYS INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS PROPERTY.

YOU MAY OBTAIN A COPY OF THE RESOLUTION CONFIRMING ASSESSMENTS THAT SPECIFIES MORE PRECISELY HOW THE ASSESSMENTS ARE APPORTIONED AMONG PROPERTIES IN THE ASSESSMENT DISTRICT FROM THE ____ (name of jurisdiction) BY CALLING ____ (telephone number). THERE MAY BE A CHARGE FOR THIS DOCUMENT NOT TO EXCEED THE ESTIMATED REASONABLE COST OF PROVIDING THE DOCUMENT.

I (WE) ACKNOWLEDGE THAT I (WE) HAVE RECEIVED A COPY OF THIS NOTICE. I (WE) UNDERSTAND THAT I (WE) MAY TERMINATE THE CONTRACT TO PURCHASE OR DEPOSIT RECEIPT AFTER RECEIVING THIS NOTICE FROM THE OWNER OR AGENT SELLING THE PROPERTY. THE CONTRACT MAY BE TERMINATED WITHIN THREE DAYS IF THE NOTICE WAS RECEIVED IN PERSON OR WITHIN FIVE DAYS AFTER IT WAS

DEPOSITED IN THE MAIL BY GIVING WRITTEN NOTICE OF THAT TERMINATION TO THE OWNER OR AGENT SELLING THE PROPERTY.

DATE: _____

_____

Buyer

_____

Buyer

CHAPTER 674

An act to amend Section 14060.6 of the Corporations Code, relating to small business programs.

[Approved by Governor October 9, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 14060.6 of the Corporations Code is amended to read:

14060.6. (a) The Legislature finds and declares that the Small Business Loan Guarantee Program has enabled participating small businesses that do not qualify for conventional business loans or Small Business Administration loans to secure funds to expand their businesses. These small businesses would not have been able to expand their businesses in the absence of the program. The program has also provided valuable technical assistance to small businesses to ensure growth and stability. The study commissioned by Section 14069.6, as added by Chapter 919 of the Statutes of 1997, documented the return on investment of the program and the need for its services. The value of the program has also been recognized by the Governor through proposals contained in the May Revision to the Budget Act of 2000 for the 2000–01 fiscal year.

(b) Notwithstanding Section 14060.5, the Technology, Trade, and Commerce Agency shall establish new small business financial development corporations pursuant to the procedures otherwise established by this chapter in the following areas:

(1) San Jose.
(2) Santa Ana.
(3) San Fernando Valley.
(4) Ontario.

(c) Upon an appropriation in the annual Budget Act for this purpose, the Secretary of the Technology, Trade, and Commerce Agency shall establish a small business financial development corporation in southeast Los Angeles.

(d) Each of the small business financial development corporations, upon the recommendation of the board and at least once each year, shall make a presentation and overview of the corporation's business operations to the board.

CHAPTER 675

An act to amend Section 16516.5 of, and to add Section 16516.6 to, the Welfare and Institutions Code, relating to foster care.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 16516.5 of the Welfare and Institutions Code is amended to read:

16516.5. (a) Notwithstanding any other provision of law or regulation, all foster children placed in group homes by county welfare departments or county probation departments shall be visited at least monthly by a county social worker or probation officer. Each visit shall include a private discussion between the foster child and the county social worker or probation officer. The discussion shall not be held in the presence or immediate vicinity of the group home staff. The contents of the private discussion shall not be disclosed to the group home staff, except that the social worker or probation officer may disclose information under any of the following circumstances:

(1) The social worker or probation officer believes that the foster child may be in danger of harming himself or herself, or others.

(2) The social worker or probation officer believes that disclosure is necessary to meet the needs of the child.

(3) The child consents to disclosure of the information.

(b) Notwithstanding Section 10101, the state shall pay 100 percent of the nonfederal costs associated with the monthly visitation requirement in subdivision (a) in excess of the minimum semiannual visits required under current regulations.

SEC. 2. Section 16516.6 is added to the Welfare and Institutions Code, to read:

16516.6. When a county social worker or probation officer makes a regular visit with a child in any licensed, certified, or approved foster home, the visit shall include a private discussion between the foster child and the social worker or probation officer. The discussion shall not be held in the presence or immediate vicinity of the foster parent or caregiver. The contents of the private discussion shall not be disclosed to the foster parent or caregiver, except that the social worker or probation officer may disclose information under any of the following circumstances:

(a) The social worker or probation officer believes that the foster child may be in danger of harming himself or herself, or others.

(b) The social worker or probation officer believes that disclosure is necessary to meet the needs of the child.

(c) The child consents to disclosure of the information.

CHAPTER 676

An act to amend and repeal Section 1808.25 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 1808.25 of the Vehicle Code is amended to read:

1808.25. (a) The department shall implement a pilot program to provide residence address information to an accredited degree-granting nonprofit independent institution of higher education incorporated in the state, that has concluded a memorandum of understanding pursuant to subdivision (b) of Section 830.7 of the Penal Code if, under penalty of perjury, the institution requests and uses the information solely for the purpose of enforcing parking restrictions.

(b) The memorandum of understanding executed by the sheriff or chief of police within whose jurisdiction the independent institution is located shall expressly permit the institution to enforce parking restrictions pursuant to subdivision (b) of Section 830.7 of the Penal Code.

For the purposes of this subdivision, a participating institution shall enter into a contractual agreement with the department that, at a minimum, requires the institution to do all of the following:

(1) Establish and maintain procedures, to the satisfaction of the department, for persons to contest parking violation notices issued by the institution.

(2) Remit a fee, as determined by the department, to cover the department's costs of providing each address to the institution.

(3) Agree that access to confidential residence address information from the department's vehicle registration database will be provided only through an approved commercial requester account.

(c) The director may terminate a contract authorized by subdivision (b) at any time the department determines that the independent institution of higher education fails to maintain adequate safeguards to ensure that the operation of the program does not adversely affect those individuals whose records are maintained in the department's files, or that the information is used for any purpose other than that specified in subdivision (a).

(d) Sections 1808.45, 1808.46, and 1808.47 are applicable to persons who obtain department records pursuant to this section and the department may pursue any appropriate civil or criminal action against any individual at an independent institution who violates the provisions of this section.

(e) For purposes of this article only, any confidential information obtained from the department for administration or enforcement of this article shall be held confidential, except to the extent necessary for the enforcement of parking restrictions, and may not be used for any purpose other than the administration or enforcement of parking restrictions.

(f) The department shall submit a report to the Legislature containing its evaluation of the pilot program which shall include a recommendation as to the advisability of continuing the program. The report shall be submitted on or before January 1, 2003.

(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. 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.

CHAPTER 677

An act to add Section 5811.2 to the Welfare and Institutions Code, relating to mental health.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 5811.2 is added to the Welfare and Institutions Code, to read:

5811.2. The department is encouraged to provide a mental health care provider with training and experience in geriatrics to oversee, monitor, and provide advice to participating counties regarding services for older adults under the counties' mental health system of care developed pursuant to this part.

CHAPTER 678

An act to add Section 10601.2 to the Welfare and Institutions Code, relating to public social services, and making an appropriation therefor.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

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

(a) The State of California has failed in its fundamental obligation to protect and care for children removed from their homes due to parental abuse and neglect.

(b) Despite incremental legislative efforts and laudable pilot projects proven to improve outcomes for the more than 100,000 children in California's child welfare care system and to preserve families, successful programs have not been appropriately replicated or adequately funded to serve all the children and families who need them.

(c) California is not making maximum use of the federal money from Title IV-E of the federal Social Security Act, available to the State of California to improve outcomes for children and families in the child welfare system.

(d) The child welfare system, including the state, the counties, and the courts, suffers from the lack of a cohesive structure, state leadership, communication between agencies serving foster children and youth, and

clear goals. There is no statewide accountability system for child and family outcomes.

(e) The 1994 amendments to the federal Social Security Act (Public Law 103-432) authorize the United States Department of Health and Human Services to review state child and family service programs in order to assure compliance with the state plan requirements in Titles IV-B and IV-E of that act. The reviews cover child protective services, foster care, adoption, family preservation, family support, and independent living. California is scheduled for review in September 2002. Failure to substantially comply with seven specific outcomes measuring child well-being and seven specific systemic factors that affect quality of services delivered to children and families may result in loss of federal dollars provided pursuant to Title IV-E of the federal Social Security Act, the major source of funding for California's child welfare system.

(f) Many abused and neglected children who are removed from their homes have been subject to ''foster care drift,'' moving from placement to placement without desirable family stability, educational stability, or appropriate care. Many children beyond infancy are placed in expensive group homes, without regard to service needs, and a substantial number have been designated as ''unadoptable.''

(g) There is a high correlation between children in the child welfare system and those subsequently in the juvenile and adult corrections systems, with this correlation being linked to such factors as high teen pregnancy and high school dropout rates, unaddressed physical or mental health needs, homelessness, and lack of adequate job skills, education, or training to become or remain employed.

(h) Accordingly, in order to provide greater accountability for child and family outcomes in California's child welfare system and to encourage the state leadership that is necessary to identify and replicate best practices to assure that the unique and critical needs of these children and their families are met, the Legislature enacts the Child Welfare System Improvement and Accountability Act of 2001.

SEC. 2. This act shall be known and may be cited as the Child Welfare System Improvement and Accountability Act of 2001.

SEC. 3. Section 10601.2 is added to the Welfare and Institutions Code, to read:

10601.2. (a) The State Department of Social Services shall establish, by April 1, 2003, the California Child and Family Service Review System in order to review all county child welfare systems. These reviews shall cover child protective services, foster care, adoption, family preservation, family support, and independent living.

(b) Child and family service reviews shall maximize compliance with the federal regulations for the receipt of money from Subtitle E

(commencing with Section 470) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 670 and following) and ensure compliance with state plan requirements set forth in Subtitle B (commencing with Section 421) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 621 and following).

(c) (1) By October 1, 2002, the California Health and Human Services Agency shall convene a workgroup comprised of representatives of the Judicial Council, the State Department of Social Services, the State Department of Health Services, the State Department of Mental Health, the State Department of Education, the Department of Child Support Services, the State Department of Justice, any other state departments or agencies the California Health and Human Services Agency deems necessary, the County Welfare Directors Association, the California State Association of Counties, the Chief Probation Officers of California, the California Youth Connection, and representatives of California Tribes, interested child advocacy organizations, researchers, and foster parent organizations. The workgroup shall establish a work plan by which child and family service reviews shall be conducted pursuant to this section, including a process for qualitative peer reviews of case information.

(2) At a minimum, in establishing the work plan, the workgroup shall consider any existing federal program improvement plans entered into by the state pursuant to federal regulations, the outcome indicators to be measured, compliance thresholds for each indicator, timelines for implementation, county review cycles, uniform processes, procedures and review instruments to be used, a corrective action process, and any funding or staffing increases needed to implement the requirements of this section. The agency shall broadly consider collaboration with all entities to allow the adequate exchange of information and coordination of efforts to improve outcomes for foster youth and families.

(d) (1) The California Child and Family Service Review System outcome indicators shall be consistent with the federal child and family service review measures and standards for child and family outcomes and system factors authorized by Subtitle B (commencing with Section 421) and Subtitle E (commencing with Section 670) of Title IV of the federal Social Security Act and the regulations adopted pursuant to those provisions (Parts 1355 to 1357, inclusive, of Title 45 of the Code of Federal Regulations).

(2) During the first review cycle pursuant to this section, each county shall be reviewed according to the outcome indicators established for the California Child and Family Service Review System.

(3) For subsequent reviews, the workgroup shall consider whether to establish additional outcome indicators that support the federal outcomes and any program improvement plan, and promote good health,

mental health, behavioral, educational, and other relevant outcomes for children and families in California's child welfare services system.

(e) The State Department of Social Services shall identify and promote the replication of best practices in child welfare service delivery to achieve the measurable outcomes established pursuant to subdivision (d).

(f) The State Department of Social Services shall report to the Assembly and Senate Budget Committees and appropriate legislative policy committees annually, beginning with the 2002–03 fiscal year, on both of the following:

(1) The department's progress in planning for the federal child and family service review to be conducted by the United States Department of Health and Human Services and, upon completion of the federal review, the findings of that review, the state's response to the findings, and the details of any program improvement plan entered into by the state.

(2) The department's progress in implementing the California child and family service reviews, including, but not limited to the timelines for implementation, the process to be used, and any funding or staffing increases needed at the state or local level to implement the requirements of this section.

(g) Effective April 1, 2003, the existing county compliance review system shall be suspended to provide to the State Department of Social Services sufficient lead time to provide training and technical assistance to counties for the preparation necessary to transition to the new child and family services review system.

(h) Beginning January 1, 2004, the department shall commence individual child and family service reviews of California counties. County child welfare systems that do not meet the established compliance thresholds for the outcome measures that are reviewed shall receive technical assistance from teams made up of state and peer-county administrators to assist with implementing best practices to improve their performance and make progress toward meeting established levels of compliance.

SEC. 4. The sum of one hundred thousand dollars ($100,000) is appropriated from the General Fund to the California Health and Human Services Agency for expenditure for purposes of convening a workgroup as required pursuant to subdivision (c) of Section 10601.2 of the Welfare and Institutions Code.

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CHAPTER 679

An act to add Section 1597.467 to the Health and Safety Code, relating to family day care homes.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 1597.467 is added to the Health and Safety Code, to read:

1597.467. (a) Whenever any licensee under this chapter has reasonable cause to believe that a child in his or her care has suffered any injury or has been subjected to any act of violence while under the licensee's care, the licensee shall, as soon as possible, report that injury or act of violence to the parent, parents, or guardian of that child.

(b) (1) A report shall be made to the department by telephone or fax during the department's normal business hours before the close of the next working day following the occurrence during the operation of a family day care home of any of the following events:

(A) Death of any child from any cause.

(B) Any injury to any child that requires medical treatment.

(C) Any unusual incident or child absence that threatens the physical or emotional health or safety of any child.

(2) In addition to the report required pursuant to paragraph (1), a written report shall be submitted to the department within seven days following the occurrence of any events specified in paragraph (1). The report shall contain all of the following information:

(A) Child's name, age, sex, and date of admission.

(B) Date and nature of the event.

(C) Attending physician's name and findings and treatment, if any.

(D) Disposition of the case.

(c) The department may develop the report form to be used for reporting purposes pursuant to this section, and shall maintain all reports filed under this section in a manner that allows the department to report the data to the Legislature.

(d) The failure of a licensee to report, as prescribed by this section, any injury of, or act of violence to, a child under the licensee's care may be grounds for the suspension of his or her license pursuant to this chapter, but shall not constitute a misdemeanor.

(e) Nothing in this section shall relieve any licensee of any obligation imposed by other law including, but not limited to, laws relating to seeking medical attention for a child or reporting suspected child abuse.

SEC. 2. The Legislature finds and declares both of the following:

(a) The process for conducting unannounced site visits of licensed family day care homes allows licensees to closely approximate the date of the visit, which may reduce the ability of the State Department of Social Services to observe the normal operation of and activities within the licensee's facility and thereby accurately assess compliance with health and safety regulations.

(b) In order to determine whether an additional unannounced site visit would provide greater protection to children in these facilities, an evaluation is needed of the current process for unannounced visits.

SEC. 3. The State Department of Social Services may, to the extent that funds are available, conduct, either directly or pursuant to a contract with a public or private entity, an evaluation to determine the overall effectiveness of unannounced site visits to licensed family day care homes, including the issue of the frequency of these visits. This evaluation may include, but is not limited to, a comparative evaluation based on information collected in a pilot project in which the effectiveness of the increased frequency of licensed family day care home site visits, among other things, is tested. If the department proceeds with the evaluation, the department shall seek non-General Fund resources for the implementation of the evaluation.

CHAPTER 680

An act to amend Section 1419 of the Health and Safety Code, relating to health.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. The Legislature finds and declares that:

(a) Over 13,000 oral and written complaints are filed each year with the Licensing and Certification Division of the State Department of Health Services.

(b) Currently, the department is required to respond to all complaints with an onsite investigation to determine if the complaint can be substantiated. A large percentage of these complaints do not allege sufficient facts to constitute a violation of state licensing or federal certification requirements, or the alleged facts cannot be substantiated upon investigation.

(c) As a result of the high volume of complaints, complaints are frequently not resolved within statutory timelines, resulting in consumer dissatisfaction and frustration.

(d) Residents, friends, and family members expect a prompt response to their questions, concerns, and complaints, including the status of the complaint.

SEC. 2. It is the intent of the Legislature to:

(a) Establish a centralized Consumer Response Unit within the Licensing and Certification Division of the State Department of Health Services that is authorized to expedite responses to consumer concerns.

(b) Promote improved public service by addressing consumer concerns as expeditiously as possible.

(c) Provide the public with additional options by allowing flexibility in determining if an informal resolution between the complainant and the facility can be achieved.

(d) Ensure that residents and family members understand their rights, the relevant regulations, and potential referrals to other agencies, so that they may better advocate for their rights.

(e) Ensure that residents and family members have a single point of contact during the progress of the investigation.

SEC. 3. Section 1419 of the Health and Safety Code is amended to read:

1419. (a) The department shall establish a centralized consumer response unit within the Licensing and Certification Division of the department to respond to consumer inquiries and complaints.

(b) Upon receipt of consumer inquiries, the unit shall offer assistance to consumers in resolving concerns about the quality of care and the quality of life in long-term health care facilities.

This assistance may include, but shall not be limited to, all of the following:

(1) Offering to provide to consumers education and information about state licensing and federal certification standards, resident rights, name and address of facilities, referral to other entities as appropriate, and facility compliance history.

(2) Offering to participate in telephone conference calls between consumers and providers to resolve concerns within the scope of the authority of the department. If the inquiry or concern is determined to warrant an onsite investigation, the inquiry or concern shall be considered a complaint and handled pursuant to the complaint investigation process set forth in Section 1420.

(3) Initiating onsite investigations in response to oral or written complaints made pursuant to this section if the unit determines that there is a reasonable basis to believe that the allegations in the complaints describe one or more violations of state law by a long-term care facility.

(c) Nothing in subdivision (a) or (b) shall preclude the department from taking any or all enforcement actions available under state or federal law.

(d) Any person may request an inspection of any long-term health care facility in accordance with this chapter by giving to the department oral or written notice of an alleged violation of applicable requirements of state law. Any written notice may be signed by the complainant setting forth with reasonable particularity the matters complained of. Oral notice may be made by telephone or personal visit. Any oral complaint shall be reduced to writing by the department. The substance of the complaint shall be provided to the licensee no earlier than at the commencement of the inspection.

(e) Neither the substance of the complaint provided the licensee nor any copy of the complaint or record published, released, or otherwise made available to the licensee shall disclose the name of any individual complainant or other person mentioned in the complaint, except the name or names of any duly authorized officer, employee, or agent of the state department conducting the investigation or inspection pursuant to this chapter, unless the complainant specifically requests the release of the name or names or the matter results in a judicial proceeding.

CHAPTER 681

An act to amend Sections 1570.7, 1572, 1572.9, 1574.5, 1575.2, 1576.2, 1581.5, and 1588.7 of, and to add Sections 1575.1, 1575.6, 1578, 1578.1, and 1579 to, the Health and Safety Code, and to amend Sections 9542, 14530, 14552, 14553, 14554, 14570, 14571, 14573, 14574, 14574.1, 14575, and 14576 of, and to repeal Sections 14552.1, 14552.2, and 14580 of, the Welfare and Institutions Code, relating to health care.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 1570.7 of the Health and Safety Code is amended to read:

1570.7. As used in this chapter:

(a) ''Adult day health care'' means an organized day program of therapeutic, social, and health activities and services provided pursuant to this chapter to elderly persons with functional impairments, either physical or mental, for the purpose of restoring or maintaining optimal

capacity for self-care. Provided on a short-term basis, adult day health care serves as a transition from a health facility or home health program to personal independence. Provided on a long-term basis, it serves as an option to institutionalization in long-term health care facilities, when 24-hour skilled nursing care is not medically necessary or viewed as desirable by the recipient or his or her family.

(b) ''Adult day health center'' or ''adult day health care center'' means a licensed and certified facility that provides adult day health care.

(c) ''Elderly'' or ''older person'' means a person 55 years of age or older, but also includes other adults who are chronically ill or impaired and who would benefit from adult day health care.

(d) ''Individual plan of care'' means a plan designed to provide recipients of adult day health care with appropriate treatment in accordance with the assessed needs of each individual.

(e) ''License'' means a basic permit to operate an adult day health care center. With respect to a health facility licensed pursuant to Chapter 2 (commencing with Section 1250), ''license'' means a special permit, as defined by Section 1251.5, empowering the health facility to provide adult day health care services.

(f) ''Maintenance program'' means procedures and exercises that are provided to a participant, pursuant to Section 1580, in order to generally maintain existing function. These procedures and exercises are planned by a licensed or certified therapist and are provided by a person who has been trained by a licensed or certified therapist and who is directly supervised by a nurse or by a licensed or certified therapist.

(g) ''Planning council'' or ''council'' means an adult day health care planning council established pursuant to Section 1572.5.

(h) ''Restorative therapy'' means physical, occupational, and speech therapy, and psychiatric and psychological services, that are planned and provided by a licensed or certified therapist. The therapy and services may also be provided by an assistant or aide under the appropriate supervision of a licensed therapist, as determined by the licensed therapist. The therapy and services are provided to restore function, when there is an expectation that the condition will improve significantly in a reasonable period of time, as determined by the multidisciplinary assessment team.

(i) ''Committee'' means the Long-Term Care Committee established pursuant to Section 1572.

(j) ''Department'' or ''state department'' means the State Department of Health Services.

SEC. 2. Section 1572 of the Health and Safety Code is amended to read:

1572. (a) The functions and duties of the State Department of Health Services provided for under this chapter shall be performed by

the California Department of Aging commencing on the date those functions are transferred from the State Department of Health Services to the California Department of Aging. The authority, functions, and responsibility for the administration of the adult day health care program by the California Department of Aging and the State Department of Health Services shall be defined in an interagency agreement between the two departments that specifies how the departments will work together.

(b) The interagency agreement shall specify that the California Department of Aging is designated by the state department as the agency responsible for community long-term care programs. At a minimum, the interagency agreement shall clarify each department's responsibilities on issues involving licensure and certification of adult day health care providers, payment of adult day health care claims, prior authorization of services, promulgation of regulations, and development of adult day health care Medi-Cal rates. In addition, this agreement shall specify that the California Department of Aging is responsible for making recommendations to the State Department of Health Services regarding licensure as specified in subdivision (g). The interagency agreement shall specify that the State Department of Health Services shall delegate to the California Department of Aging the responsibility of performing the financial and cost report audits and the resolution of audit appeals which are necessary to ensure program integrity. This agreement shall also include provisions whereby the State Department of Health Services and the California Department of Aging shall collaborate in the development and implementation of health programs and services for older persons and functionally impaired adults.

(c) As used in this chapter, ''director'' means the Director of Health Services.

(d) (1) A Long-Term Care Committee is hereby established in the California Department of Aging. The committee shall include, but not be limited to, a member of the California Commission on Aging, who shall be a member of the Long-Term Care Committee of the commission, a representative of the California Association for Adult Day Services, a representative of the California Association of Area Agencies on Aging, a representative of the California Conference of Local Health Officers, a member of a local adult day health care planning council, nonprofit representatives and professionals with expertise in Alzheimer's disease or a disease of a related disorder, a member of the California Coalition of Independent Living Centers, and representatives from other appropriate state departments, including the State Department of Health Services, the State Department of Social Services, the State Department of Mental Health, the State Department of Developmental Services and the State Department of Rehabilitation, as

deemed appropriate by the Director of the California Department of Aging. At least one member shall be a person over 60 years of age.

(2) The committee shall function as an advisory body to the California Department of Aging and advise the Director of the California Department of Aging regarding development of community-based long-term care programs. This function shall also include advice to the Director of the California Department of Aging for recommendations to the department on licensure, Medi-Cal reimbursement, and utilization control issues.

(3) The committee shall be responsible for the reviewing of new programs under the jurisdiction of the California Department of Aging.

(4) The committee shall assist the Director of the California Department of Aging in the development of procedures and guidelines for new contracts or grants, as well as review and make recommendations on applicants. The committee shall take into consideration the desirability of coordinating and utilizing existing resources, avoidance of duplication of services and inefficient operations, and locational preferences with respect to accessibility and availability to the economically disadvantaged older person.

(e) The California Department of Aging shall prepare guidelines for adoption by the local planning councils setting forth principles for evaluation of community need for adult day health care, which shall take into consideration the desirability of coordinating and utilizing existing resources, avoidance of duplication of services and inefficient operations, and locational preferences with respect to accessibility and availability to the economically disadvantaged older person.

(f) The California Department of Aging shall review county plans submitted pursuant to Section 1572.9. These county plans shall be approved if consistent with the guidelines adopted by the director pursuant to subdivision (e).

(g) The Director of the California Department of Aging shall make recommendations regarding licensure to the Licensing and Certification Division in the State Department of Health Services. The recommendation shall be based on all of the following criteria:

(1) An evaluation of the ability of the applicant to provide adult day health care in accordance with the requirements of this chapter and regulations adopted hereunder.

(2) Compliance with the local approved plan.

(3) Other criteria that the director deems necessary to protect public health and safety.

(h) A public hearing on each individual proposal for an adult day health care center may be held by the department in conjunction with the local adult day health care council in the county to be served. A hearing shall be held if requested by a local adult day health care council. In order

to provide the greatest public input, the hearing should preferably be held in the service area to be served.

SEC. 3. Section 1572.9 of the Health and Safety Code is amended to read:

1572.9. (a) Each planning council approved by the director as meeting the compositional requirements of Section 1572.5 shall adopt an adult day health care plan for the county or counties represented by the council. The plan shall be consistent with the state guidelines adopted pursuant to subdivision (e) of Section 1572 and may include the council's recommendations respecting providers initially determined to be suitable for approval as adult day health care centers. These initial recommendations shall not bind the council with respect to future consideration of individual applications for licensure.

(b) Prior to adopting the plan, the council shall hold a hearing or hearings thereon at which public comment shall be received and considered. The hearing or hearings shall be noticed in advance in the manner prescribed by the state department. The number of hearings shall be determined by the state department in consultation with the local planning council. The plan shall become effective when approved by the Long-Term Care Committee.

SEC. 4. Section 1574.5 of the Health and Safety Code is amended to read:

1574.5. (a) All adult day health care centers shall maintain compliance with licensing and certification requirements. These requirements shall not prohibit program flexibility for the use of alternate concepts, methods, procedures, techniques, equipment, number and qualifications of personnel, or the conducting of pilot projects, if these alternatives or pilot projects are carried out with provisions for safe and adequate care and with the prior written approval of the state department. This approval shall provide for the terms and conditions under which permission to use an alternative or pilot program is granted. Particular attention shall be given to encourage the development of models appropriate to rural areas. The department may allow the substitution of work experience for academic requirements for the position of administrator, program director, or activity coordinator.

(b) The applicant or licensee may submit a written request to the department for program flexibility, and shall submit with the request substantiating evidence supporting the request.

(c) Any approval by the department granted under this section, or a true copy thereof, shall be posted immediately adjacent to the center's license.

SEC. 5. Section 1575.1 is added to the Health and Safety Code, to read:

1575.1. (a) (1) Each applicant for a license to operate an adult day health care center shall disclose to the department the name and business address of each general partner if the applicant is a partnership, or each director and officer if the applicant is a corporation, and each person having a beneficial ownership or control interest of 5 percent or more in the applicant corporation, company, or partnership.

(2) If any person described in paragraph (1) has served or currently serves as an administrator, general partner, trustee or trust applicant, sole proprietor of any applicant or licensee who is a sole proprietor, executor, or corporate officer or director of, or has held a beneficial ownership or control interest of 5 percent or more in, any health facility as defined in Section 1250, adult day health care center, residential care facility for the elderly, home health agency, clinic, or community care facility licensed pursuant to Chapter 3 (commencing with Section 1500), the applicant shall disclose the relationship to the department, including the name and current or last address of the health facility, adult day health care center, residential care facility for the elderly, home health agency, clinic, or community care facility and the date the relationship commenced and, if applicable, the date it was terminated.

(3) (A) If the center is operated by, or proposed to be operated in whole or in part under, a management contract, the names and addresses of any person or organization, or both, having an ownership or control interest of 5 percent or more in the management company shall be disclosed to the department.

(B) This paragraph shall not apply if the management company has submitted an application for licensure with the department and has complied with paragraph (1).

(4) If the applicant or licensee is a subsidiary of another organization, the information shall include the names and addresses of the parent organization of the subsidiary and the names and addresses of any officer or director of the parent organization.

(b) The information required by subdivision (a) shall be provided to the department upon initial application for licensure, and upon payment of the annual renewal licensure fee.

(c) Failure to comply with subdivision (a) or (b) may result in action to revoke or deny a license. The information required by subdivisions (a) and (b) shall be made available to the public upon request, and shall be included in the public file of the center.

(d) On or after January 1, 2002, no person may acquire a beneficial or control interest of 5 percent or more in any corporation, company, or partnership licensed to operate an adult day health care center or in any management company under contract with a licensee of an adult day health care center, nor may any person become an officer or director of, or a general partner in, a corporation, partnership, or management

company of this type without the prior written approval of the department. Each application for departmental approval pursuant to this subdivision shall include the information specified in subdivision (a) with regard to the person for whom the application is made.

(e) The department may deny approval of a license application or of an application for approval under subdivision (d) or revoke a license if a person named in the application, as required by this section, was suspended as a Medi-Cal provider or excluded as a medicaid or Medicare provider, was an officer, director, general partner, or owner of a 5 percent or greater beneficial or control interest in a licensee of, or in a management company under contract with a licensee of, a health facility, community care facility, residential care facility for the elderly, home health agency, clinic, or adult day health care center at a time when one or more violations of law were committed therein that resulted in suspension or revocation of its license, or at a time when a court-ordered receiver was appointed pursuant to Section 1327, or at a time when a final medicaid decertification action was taken under federal law. However, the prior suspension, revocation, or court-ordered receivership of a license shall not be grounds for denial of the application if the applicant shows to the satisfaction of the department that both of the following conditions exist:

(1) The person in question took every reasonably available action to prevent the violation or violations that resulted in the disciplinary action.

(2) The person in question took every reasonably available action to correct the violation or violations once he or she knew, or with the exercise of reasonable diligence should have known, of the violation or violations.

(f) No application shall be denied pursuant to this section until the department provides the applicant with notice in writing of grounds for the proposed denial of application and affords the applicant an opportunity to submit additional documentary evidence in opposition to the proposed denial.

(g) This section shall not apply to a bank, trust company, financial institution, title insurer, controlled escrow company, or underwritten title company to which a license is issued in a fiduciary capacity.

SEC. 6. Section 1575.2 of the Health and Safety Code is amended to read:

1575.2. An applicant for initial licensure as an adult day health care center shall file with the department, pursuant to its regulations, an application on forms furnished by the department, that shall include, but not be limited to, the following:

(a) Evidence satisfactory to the department that the applicant, its directors, officers, and the person designated to manage the day-to-day

affairs of the proposed adult day health care center are of reputable and responsible character.

(b) Evidence satisfactory to the department of the ability of the applicant to comply with the provisions of this chapter and of rules and regulations adopted pursuant thereto by the department.

(c) Evidence satisfactory to the department that the applicant for a license to operate an adult day health care center possesses financial resources sufficient to operate each licensed center for a period of not less than 30 calendar days and that these resources are identified for adult day health care center operations. The financial reserve requirements may be met, in whole or in part, by a line of credit or a loan.

(d) Any other information as may be required by the department for the proper administration and enforcement of this chapter.

SEC. 6.5. Section 1575.6 is added to the Health and Safety Code, to read:

1575.6. (a) As a prudent business practice, a licensee shall maintain sufficient financial resources for adult day health care operations to enable each licensed facility to operate for 30 calendar days.

(b) The financial resource requirement contained in subdivision (a) may be met, in whole or in part, by a line of credit, grant, or loan.

(c) Whenever a licensee fails to meet the financial resource requirement contained in subdivision (a) for a period of 10 working days, the licensee shall notify the department of that fact within 48 hours.

SEC. 7. Section 1576.2 of the Health and Safety Code is amended to read:

1576.2. (a) Each license issued or renewed pursuant to this chapter shall not be transferable and the initial license shall expire 12 months from the date of its issuance. The director shall be given the discretion to approve applications for relicensure for a period of up to 24 months. Application for annual renewal of a license, accompanied by the required fee, shall be filed with the department not less than 30 days prior to the expiration date. Failure to submit a renewal application prior to that date shall result in expiration of the license.

(b) A license shall be rescinded for an applicant that has had its Medi-Cal certification for adult day health care revoked.

SEC. 8. Section 1578 is added to the Health and Safety Code, to read:

1578. A provider may share space with another licensed health facility, community care facility, senior center, or other appropriate structure, upon the approval of the department, based upon a determination of all of the following:

(a) The use of the shared space does not jeopardize the welfare of the participant or other clients.

(b) The shared use does not exceed occupancy capacity established for fire safety.

(c) The space used by the adult day health care center is not essential to meet the other program's licensing requirements.

(d) Each entity schedules services and activities at separate times. This subdivision shall not apply to space used for meals or for space used by another licensed adult day services program.

For purposes of this section, ''shared space'' means the mutual use of exits and entrances, offices, hallways, bathrooms, treatment rooms, and dining rooms by an adult day health care center and another program.

SEC. 9. Section 1578.1 is added to the Health and Safety Code, to read:

1578.1. (a) Notwithstanding subdivisions (b) and (c) of Section 1570.7 or any other provision of law, if an adult day health care center licensee also provides adult day care or adult day support center services, the adult day health care license shall be the only license required to provide these additional services. Costs shall be allocated among the programs in accordance with generally accepted accounting practices.

(b) The department, unless otherwise specified by the interagency agreement entered into pursuant to Section 1572 shall evaluate the adult day care or adult day support center services provided for in subdivision (a) for quality of care and compliance with program requirements, concurrent with inspections of the adult day health care facility, using a single survey process.

(c) The department and the California Department of Aging shall jointly develop and adopt regulations pursuant to Section 1580 for the provision of different levels of care under the single adult day health care license.

SEC. 10. Section 1579 is added to the Health and Safety Code, to read:

1579. (a) A rural alternative adult day health care center shall operate its programs a minimum of three days weekly, unless the program can justify, to the satisfaction of the department, fewer days of operation due to space, staff, financial, or participant reasons.

(b) Any program desiring to become a parent center and develop a satellite program may be located in a service area that does not meet the population requirements of the rural service areas and need not be in the same county as a satellite. The satellite shall be located in an area that meets the population requirements of a rural service area, and shall be located within a reasonable distance of the parent center to allow sharing of administration, services, and supervision. Parent and satellite centers shall be located in the same licensing district office.

(c) Notwithstanding any other provision of law, the administrator or program director of a parent center may, with the approval of the

department, serve as the administrator or program director for up to three additional satellite sites.

(d) For the purposes of this section, the following definitions apply:

(1) ''Parent'' means a licensed and certified adult day health care center that establishes one or more satellites. A satellite may be in the county of the parent or rural service areas. The parent center shall provide administration, supervision, and, with the approval of the department, may share services and staff with one or more satellite centers. The parent center's license and certification shall cover adult day health care services at one or more satellites.

(2) ''Rural alternative adult day health care center'' means an adult day health care center located in a rural service area.

(3) ''Rural service area'' means any identified service area in an approved adult day health care county plan with 200 or less estimated adult day health care eligible population and with two or more of the following characteristics:

(A) Is more than one-half hour direct driving time from an urban area of 50,000 population or more.

(B) Has no other adult day health care center within one-half hour direct driving time.

(C) Has geographic or climatic barriers, including, but not limited to, snow, fog, ice, mountains, inadequate highways, or weather, that make transportation to another adult day health care center impractical.

(D) Is located in a county with an overall population density of less than 100 persons per square mile.

(E) Can demonstrate in the application for licensure that a shortage of qualified professionals exists in the county or service area.

(4) ''Satellite'' means an adult day health care center established in a rural service area by an existing licensed and certified adult day health care center for the purposes of extending rural adult day health care services to another location. A satellite shall be located close enough to the adult day health center so that administration, supervision, and services may be shared in a manner that does not compromise care and makes it unnecessary for the satellite to be separately licensed. Each satellite shall meet fire and life safety regulations and laws. Prior approval from the department is required before operating or opening a satellite.

SEC. 11. Section 1581.5 of the Health and Safety Code is amended to read:

1581.5. Any duly authorized officer, employee, or agent of the department or the California Department of Aging may, upon presentation of proper identification, enter and inspect any place providing adult day health care at any time, with or without advance

notice, to secure compliance with, or to prevent a violation of, any provision of this chapter or any regulation adopted hereunder.

SEC. 12. Section 1588.7 of the Health and Safety Code is amended to read:

1588.7. (a) The department, unless otherwise specified in the interagency agreement entered into pursuant to Section 1572 or pursuant to annual Budget Act requirements, shall adopt specific guidelines for the establishment of grant-supported activities, including criteria for evaluation of each activity and monitoring to assure compliance with grant conditions and applicable regulations of the state department. The guidelines shall be developed in consultation with the Long-Term Care Committee. Funds shall be awarded only after the local adult day health care planning council has had opportunity to review and comment on the applicant's proposal pursuant to guidelines established for these grants and is approved by the department, or by the California Department of Aging. If an area does not have an active planning council or an approved planning council, the applicant shall be exempt from this review.

(b) The department, unless otherwise specified by annual Budget Act requirements, shall develop a contract with each selected project.

SEC. 13. Section 9542 of the Welfare and Institutions Code is amended to read:

9542. (a) The Legislature finds and declares that the purpose of the Alzheimer's Day Care-Resource Center Program is to provide access to specialized day care resource centers for individuals with Alzheimer's disease and other dementia-related disorders and support to their families and caregivers.

(b) The following definitions shall govern the construction of this section:

(1) ''Participant'' means an individual with Alzheimer's disease or a disease of a related type, particularly the participant in the moderate to severe stages, whose care needs and behavioral problems may make it difficult for the individual to participate in existing care programs.

(2) ''Other dementia-related disorders'' means those irreversible brain disorders that result in the symptoms described in paragraph (3). This shall include, but is not limited to, multi-infarct dementia and Parkinson's disease.

(3) ''Care needs'' or ''behavioral problems'' means the manifestations of symptoms that may include, but need not be limited to, memory loss, aphasia (communication disorder), becoming lost or disoriented, confusion and agitation, with the potential for combativeness, and incontinence.

(4) ''Alzheimer's day care resource center'' means a center developed pursuant to this section to provide a program of specialized day care for participants with dementia.

(c) The department shall adopt policies and guidelines to carry out the purposes of this section, and the adoption thereof shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) In order to be eligible to receive funds under this section, a direct services contract applicant shall do all of the following:

(1) Provide a program and services to meet the special care needs of, and address the behavioral problems of, participants.

(2) Provide adequate and appropriate staffing to meet the nursing, psychosocial, and recreational needs of participants.

(3) Provide physical facilities that include the safeguards necessary to protect the participants' safety.

(4) Provide a program for assisting individuals who cannot afford the entire cost of the program. This may include, but need not be limited to, utilizing additional funding sources to provide supplemental aid and allowing family members to participate as volunteers at the applicant's facility.

(5) Utilize volunteers and volunteer aides and provide adequate training for those volunteers.

(6) Provide a match of not less than 25 percent of the direct services contract amount consisting of cash or in-kind contributions, identify other potential sources of funding for the applicant's facility, and outline plans to seek additional funding to remain solvent.

(7) Maintain family and caregiver support groups.

(8) Encourage family members and caregivers to provide transportation to and from the applicant's facility for participants.

(9) Concentrate on participants in the moderate to severe ranges of disability.

(10) Provide or arrange for a noon meal to participants.

(11) Establish contact with local educational programs, such as nursing and gerontology programs, to provide onsite training to students.

(12) Provide services to assist family members, including counseling and referral to other resources.

(13) Serve as model centers available to other service providers for onsite training in the care of these patients.

(14) Involve the center in community outreach activities and provide educational and informational materials to the community.

(15) Maintain a systematic means of capturing and reporting all required community-based services program data.

(e) Notwithstanding any provision of the Health and Safety Code, direct services contractors that are not licensed as an adult day care center, adult day support center, or adult day health care center shall be exempt from licensure requirements under this division and shall be

subject exclusively to this chapter for purposes of operating an Alzheimer's day care resource center. However, if a direct service contractor is licensed in one of the above categories at the time the contractor is awarded Alzheimer's day care resource center funds or becomes licensed after the award of the funds, this exemption shall not apply, even if the contractor chooses to subsequently surrender the license. If the license as an adult day care center, adult day support center, or adult day health care center has been surrendered by the direct service contractor or has been terminated as a result of noncompliance with the applicable licensure or certification standards, these actions shall also act to terminate the direct service contractor's Alzheimer's day care resource center contract.

(f) Nothing in this chapter shall be construed to prevent existing adult day care services, including adult day health care centers, from developing a specialized program under this chapter. The applicants shall meet all of the requirements for direct services contractors in this chapter and satisfactorily demonstrate that the direct services contract funding award shall be used to develop a distinct specialized program for this target population.

SEC. 14. Section 14530 of the Welfare and Institutions Code is amended to read:

14530. (a) Individual plans of care shall be submitted to the department. Services for each participant shall be provided as specified in the individual plan of care approved pursuant to Section 14526.

(b) Individual monthly service reports shall be submitted to the department.

(c) Each provider shall supply a written statement to the participant explaining what services will be provided and specifying the scheduled days of attendance. This statement, which shall be known as the participation agreement, shall be signed by the participant and a provider representative and retained in the participant's file.

SEC. 15. Section 14552 of the Welfare and Institutions Code is amended to read:

14552. In order to obtain certification as a provider of adult day health care under this chapter and Chapter 7 (commencing with Section 14000), the following standards shall be met:

(a) The provider shall have met all other requirements of licensure as an adult day health care center pursuant to Chapter 3.3 (commencing with Section 1570) of Division 2 of the Health and Safety Code.

(b) The provider shall comply with requirements of this chapter regarding program and scope of services.

(c) The provider shall have appropriate licensed personnel.

(d) The provider shall employ allied health and social personnel for furnishing of services consistent with good medical practice.

(e) The provider shall afford to each participant all rights, including the right to be free from harm and abuse, identified in the rules and regulations adopted pursuant to Section 1580 of the Health and Safety Code.

(f) A provider serving a substantial number of participants of a particular racial group, or whose primary language is other than English, shall employ staff of that particular racial or linguistic group at all times.

(g) A provider shall have organizational and administrative capacity to provide services under provisions of this chapter.

(h) A provider or applicant shall submit for review and approval by the California Department of Aging a facility program plan for providing adult day health care services that meets the following requirements:

(1) The facility program plan shall be developed, submitted, and approved prior to initial licensure and certification, prior to any change in the specialty or specific population to be served, or as required by the California Department of Aging.

(2) The facility program plan shall include all of the following:

(A) The number of participants to be served.

(B) A profile of the participant population that addresses specific needs of the population, including, but not limited to, frail elderly or specialization in a particular disability.

(C) A summary of the specific program elements, including those that specifically address the population served.

(D) A summary of the specialized professional or program staff who will provide services specific to the specialty population served and their responsibilities.

(E) An in-service training program plan for at least a six-month interval.

(F) A sample of an individual plan of care developed by the multidisciplinary team and under the direction of the program director and a sample of a one-week schedule of daily services based on the individual plan of care.

(G) A plan for any behavior modification program that is used with a specialty population such as developmentally or mentally disabled persons.

(3) The provider or applicant shall be notified in writing of the approval of the facility program plan.

(4) If the facility program plan is not approved, the provider or applicant shall be notified in writing of the components of the plan that need to be clarified or corrected. The provider or applicant may submit a revised plan to the California Department of Aging for reconsideration.

SEC. 16. Section 14552.1 of the Welfare and Institutions Code is repealed.

SEC. 17. Section 14552.2 of the Welfare and Institutions Code is repealed.

SEC. 18. Section 14553 of the Welfare and Institutions Code is amended to read:

14553. An adult day health care provider shall establish written policies and procedures, which shall have prior approval of the department, unless otherwise specified in an interagency agreement entered into pursuant to Section 1572 of the Health and Safety Code, for continuously reviewing the quality of care, performance of all personnel, the utilization of services and facilities, and costs. Information derived from the review shall be made available to the department, unless otherwise specified in an interagency agreement entered into pursuant to Section 1572 of the Health and Safety Code.

SEC. 19. Section 14554 of the Welfare and Institutions Code is amended to read:

14554. The adult day health care provider shall maintain a complete standard medical record for each participant, including records of treatment rendered by a subcontractor, according to specifications established by the department and as may be further specified by the California Department of Aging.

SEC. 20. Section 14570 of the Welfare and Institutions Code is amended to read:

14570. (a) The department shall adopt all necessary rules and regulations providing for quality of care and payment for services rendered under this chapter pursuant to Chapter 7 (commencing with Section 14000). All regulations heretofore adopted by the department pursuant to this chapter, and that are in effect immediately preceding the operative date of the amendment of this section enacted by the Legislature during the 1977–78 Regular Session, shall remain in effect and shall be fully enforceable unless and until readopted, amended, or repealed by the director.

(b) The director shall establish a distinct organizational entity within the department that shall have primary responsibility for the Adult Day Health Care Medi-Cal program. This entity shall coordinate and direct all departmental activities required by this chapter.

SEC. 21. Section 14571 of the Welfare and Institutions Code is amended to read:

14571. The department, in consultation with the California Association for Adult Day Services, shall develop a rate methodology. The methodology shall take into consideration all allowable costs associated with providing adult day health care services. Once a methodology has been approved by the department, it shall be the basis of future annual rate reviews.

Payment shall be for services provided in accordance with an approved individual plan of care. Billing shall be submitted directly to the department. Additionally, the department shall establish a reasonable rate of reimbursement for the initial assessment.

Nothing in this section shall preclude the department from entering into specific prospective budgeting and reimbursement agreements with providers.

SEC. 22. Section 14573 of the Welfare and Institutions Code is amended to read:

14573. (a) Initial Medi-Cal certification for adult day health care providers shall expire 12 months from the date of issuance. The director shall specify any date he or she determines is reasonably necessary because of the record of the applicant and to carry out the purposes of this chapter, but not more than 24 months from the date of issuance, when renewal of the certification shall expire. The certification may be extended for a period of not more than 60 days if the department determines it to be necessary.

(b) Before certification renewal the provider shall submit with the application therefor a report according to department specifications that includes an analysis of income and expenditures, continued demonstrated community need, services, participant statistics and outcome, and adherence to policies and procedures.

(c) Prior to approving renewal of Medi-Cal certification, the department and the California Department of Aging shall conduct a financial review and onsite medical and management reviews with the licensing review. The reviews shall be conducted by a team of persons with appropriate technical skills. The management review shall be performed by the entity responsible for directing and coordinating the program, as specified in the interagency agreement entered into pursuant to Section 1572 of the Health and Safety Code.

(d) Where the director determines that the public interests would be served thereby, a public hearing may be held on any renewal application subject to this section. The findings of the departmental program and licensing reviews and the provider's annual evaluation report shall be presented at the hearing.

SEC. 23. Section 14574 of the Welfare and Institutions Code is amended to read:

14574. (a) The director shall terminate the Medi-Cal certification of any adult day health care provider at any time if he or she finds the provider is not in compliance with standards prescribed by this chapter or Chapter 7 (commencing with Section 14000) or regulations adopted pursuant to these chapters. The director shall give reasonable notice of his or her intention to terminate the certification to the provider and

participants in the center. The notice shall state the effective date of, and the reason for, the termination.

(b) The denial, suspension, or termination of certification shall be considered immediate grounds for denial, suspension, or revocation of the license.

(c) Proceedings to deny an application for certification or licensure, terminate or suspend certification, or revoke or suspend licensure shall be consolidated whenever possible.

(d) The California Department of Aging and the department shall coordinate an action or actions to the extent appropriate to ensure consistency and uniformity.

(e) The provider shall have the right to appeal the department's decision made pursuant to Section 14123.

SEC. 24. Section 14574.1 of the Welfare and Institutions Code is amended to read:

14574.1. (a) Every adult day health care center shall be periodically inspected and evaluated for quality of care by a representative or representatives designated by the director, unless otherwise specified in the interagency agreement entered into pursuant to Section 1572 of the Health and Safety Code. Inspections shall be conducted prior to the expiration of certification, but at least every two years, and as often as necessary to ensure the quality of care being provided. As resources permit, an inspection may be conducted prior to, as well as within, the first 90 days of operation.

(b) If, as a result of the inspection, the department or the California Department of Aging, as specified in the interagency agreement, determines that the adult day health care center has serious deficiencies that pose a risk to the health and safety of the participants, the department or the California Department of Aging, as specified in the interagency agreement, may immediately take any of the following actions, including, but not limited to:

(1) Require a plan of correction.

(2) Limit participant enrollment.

(3) Prohibit new participant enrollment.

(c) The provider shall have the right to dispute an action taken under paragraphs (2) and (3) of subdivision (b). The department or the California Department of Aging, as specified in the interagency agreement, shall accept, consider, and resolve disputes filed pursuant to this subdivision in a timely manner. The dispute resolution process shall be determined by the California Department of Aging in consultation with the department.

(d) The director shall ensure that public records accurately reflect the current status of any potential actions including the resolution of disputes.

SEC. 25. Section 14575 of the Welfare and Institutions Code is amended to read:

14575. Each adult day health care provider shall maintain a uniform accounting and reporting system as developed by the department, in consultation with the provider. The department shall implement a uniform cost accounting system and train providers in this system by July 1, 1987. The California Department of Aging, in coordination with the department may approve an alternative cost accounting system where the provider demonstrates the ability to report comparable and reliable data. The provider shall submit annual cost reports to the department, unless otherwise specified in an interagency agreement entered into pursuant to Section 1572 of the Health and Safety Code, no later than five months after the close of the licensee's fiscal year. The report shall be submitted in the format prescribed by the state. Each facility shall maintain, for a period of four years following the submission of annual cost reports, financial and statistical records of the period covered by the cost reports which are accurate and in sufficient detail to substantiate the cost data reported. These records shall be made available to state or federal representatives upon request. The department, unless otherwise specified in an interagency agreement entered into pursuant to Section 1572 of the Health and Safety Code, may request a financial review performed by an independent certified public accountant as part of the provider's annual cost report. All certified financial statements shall be filed with the department within a period no later than three months after the department's request. The department, unless otherwise specified in an interagency agreement entered into pursuant to Section 1572 of the Health and Safety Code, may require a limited or complete certified public accountant audit when the monitoring activities carried out pursuant to Section 14573 reveal significant financial management deficiencies.

SEC. 26. Section 14576 of the Welfare and Institutions Code is amended to read:

14576. Each adult day health care provider shall furnish to the department, unless otherwise specified by the interagency agreement entered into pursuant to Section 1572 of the Health and Safety Code, all additional information and reports that the department may find necessary in performing its functions under this chapter. The information and reports shall include, but not be limited to, any statistical information regarding utilization of services, individual treatment plans and individual service reports, costs of health care, and administration the department may require.

SEC. 27. Section 14580 of the Welfare and Institutions Code is repealed.

CHAPTER 682

An act to add Chapter 6.5 (commencing with Section 9320) to Division 8.5 of the Welfare and Institutions Code, relating to senior legal services, and making an appropriation therefor.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

I am signing Assembly Bill 830, a bill that will establish a task force to study and recommend innovative measures to improve the delivery of legal services to California's senior citizens.

Many California seniors of low and moderate means are in need of legal advice and assistance to help them navigate through complex issues of daily living. The task force will provide the California Department of Aging and the Legislature with valuable insight and advice regarding uniform standards, accountability in service delivery, and local sources of funding for senior legal services. I support the author's efforts to enhance both the quantity and quality of legal services provided to one of California's most vulnerable populations. I am further directing the California Department of Aging to establish the task force within existing resources.

GRAY DAVIS, Governor

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

SECTION 1. The Legislature finds and declares the following:

(a) California senior citizens of low- and moderate means are in great need of legal advice and assistance.

(b) Existing nonprofit local legal services that are funded by the federal Older Americans Act through local area agencies on aging are unable to meet the demand of senior citizens who cannot afford private attorneys.

(c) There are areas of the state without local legal services for senior citizens.

(d) A senior legal hotline, based in Sacramento and funded until 2002 by the Older Americans Act, has provided legal services in all areas of law to thousands of senior citizens in northern California since 1994. However, this senior legal hotline is unable to fully meet the needs of seniors in its northern California service area at current funding levels.

(e) There is no similar senior legal hotline in southern California.

(f) Due to funding constraints, the California Department of Aging has been unable to allocate sufficient resources for regular communication among the various legal services programs for seniors.

(g) Unlike some other states, California does not provide matching funds specifically for legal services programs that serve seniors.

SEC. 2. Chapter 6.5 (commencing with Section 9320) is added to Division 8.5 of the Welfare and Institutions Code, to read:

CHAPTER 6.5. SENIOR LEGAL SERVICES

9320. (a) The department shall establish a task force to study and make recommendations, including action steps and timelines, on the improvement of legal services delivery to senior citizens in California by exploring the following matters:

(1) Actions to ensure that all area agencies on aging allocate sufficient funding to local legal assistance providers. Actions may include, but not be limited to, the establishment of a minimum percentage of area agency on aging funding for legal assistance providers in California.

(2) Ways to ensure uniformity in the provision of legal services throughout the state, including, but not limited to, possible development of uniform statewide standards for the delivery of legal services in California.

(3) Measures to evaluate and monitor local legal assistance programs to ensure compliance with the federal Older Americans Act and its implementing regulations.

(4) Establishment of statewide reporting system to assess the effectiveness of legal assistance programs for seniors in the state.

(5) The possible establishment of a statewide legal hotline for seniors.

(6) Opportunities to enhance communications among the various service providers and to ensure efficient service delivery involving local programs and a statewide hotline, should it come into existence.

(7) Opportunities for joint training for senior legal services advocates around the state.

(8) Other states' legal services delivery networks.

(b) The director shall serve on or appoint a representative to the task force, and shall appoint the following additional members:

(1) One member of the Legislature or his or her representative.

(2) Three legal services director representatives of existing legal service programs for seniors.

(3) The Legal Services Developer at the California Department of Aging.

(4) Two area agency on aging directors.

(5) Two representatives of senior advocacy organizations.

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

(c) The Member of the Legislature, or his or her representative, shall serve on the task force to the extent that the service is compatible with the duties of a Member of the Legislature.

(e) The task force shall report and make its recommendations to the Legislature on or before September 1, 2002.

SEC. 3. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the California Department of Aging for the purpose of establishing the task force described in Section 9320 of the Welfare and Institutions Code.

CHAPTER 683

An act to add Section 1530.91 to the Health and Safety Code, and to amend Sections 16164 and 16501.1 of, and to add Sections 27 and 16001.9 to, the Welfare and Institutions Code, relating to human services.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. It is the intent of the Legislature that the rights of children in out-of-home placement are not infringed upon, and when a foster child's rights conflict with the health or safety of the child or others, the Legislature urges counties and foster care providers to find a way to preserve the child's rights in a manner that maintains the health and safety of the child and others.

SEC. 1.5. Section 1530.91 is added to the Health and Safety Code, to read:

1530.91. (a) Except as provided in subdivision (b) any care provider that provides foster care for children pursuant to this chapter shall provide each schoolage child and his or her authorized representative, as defined in regulations adopted by the department, who is placed in foster care, with an age and developmentally appropriate orientation that includes an explanation of the rights of the child, as specified in Section 16001.9 of the Welfare and Institutions Code, and addresses the child's questions and concerns.

(b) Any facility licensed to provide foster care for six or more children pursuant to this chapter shall post a listing of a foster child's rights specified in Section 16001.9 of the Welfare and Institutions Code. The office of the State Foster Care Ombudsperson shall design posters and provide the posters to each facility subject to this subdivision. The

posters shall include the telephone number of the State Foster Care Ombudsperson.

SEC. 2. Section 27 is added to the Welfare and Institutions Code, to read:

27. Each agency and department responsible for listing in regulations the rights of children under this division shall incorporate the rights of foster children, as listed in Section 16001.9 on the list.

SEC. 3. Section 16001.9 is added to the Welfare and Institutions Code, to read:

16001.9. (a) It is the policy of the state that all children in foster care shall have the following rights:

(1) To live in a safe, healthy, and comfortable home where he or she is treated with respect.

(2) To be free from physical, sexual, emotional, or other abuse, or corporal punishment.

(3) To receive adequate and healthy food, adequate clothing, and, for youth in group homes, an allowance.

(4) To receive medical, dental, vision, and mental health services.

(5) To be free of the administration of medication or chemical substances, unless authorized by a physician.

(6) To contact family members, unless prohibited by court order, and social workers, attorneys, foster youth advocates and supporters, Court Appointed Special Advocates (CASA), and probation officers.

(7) To visit and contact brothers and sisters, unless prohibited by court order.

(8) To contact the Community Care Licensing Division of the State Department of Social Services or the State Foster Care Ombudsperson regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.

(9) To make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order.

(10) To attend religious services and activities of his or her choice.

(11) To maintain an emancipation bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.

(12) To not be locked in any room, building, or facility premises, unless placed in a community treatment facility.

(13) To attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with the child's age and developmental level.

(14) To work and develop job skills at an age-appropriate level that is consistent with state law.

(15) To have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends.

(16) To attend Independent Living Program classes and activities if he or she meets age requirements.

(17) To attend court hearings and speak to the judge.

(18) To have storage space for private use.

(19) To review his or her own case plan if he or she is over 12 years of age and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan.

(20) To be free from unreasonable searches of personal belongings.

(21) To confidentiality of all juvenile court records consistent with existing law.

(b) Nothing in this section shall be interpreted to require a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

SEC. 4. Section 16164 of the Welfare and Institutions Code is amended to read:

16164. (a) The Office of the State Foster Care Ombudsperson shall do all of the following:

(1) Disseminate information on the rights of children and youth in foster care and the services provided by the office. The rights of children and youths in foster care are listed in Section 16001.9. The information shall include notification that conversations with the office may not be confidential.

(2) Investigate and attempt to resolve complaints made by or on behalf of children placed in foster care, related to their care, placement, or services.

(3) Decide, in its discretion, whether to investigate a complaint, or refer complaints to another agency for investigation.

(4) Upon rendering a decision to investigate a complaint from a complainant, notify the complainant of the intention to investigate. If the office declines to investigate a complaint or continue an investigation, the office shall notify the complainant of the reason for the action of the office.

(5) Update the complainant on the progress of the investigation and notify the complainant of the final outcome.

(6) Document the number, source, origin, location, and nature of complaints.

(7) Compile and make available to the Legislature all data collected over the course of the year including, but not limited to, the number of contacts to the toll-free telephone number, the number of complaints made, the number of investigations performed by the office, the number of referrals made, and the number of unresolved complaints.

(8) Have access to any record of a state or local agency that is necessary to carry out his or her responsibilities, and may meet or communicate with any foster child in his or her placement or elsewhere.

(b) The office may establish, in consultation with a committee of interested individuals, regional or local foster care ombudsperson offices for the purposes of expediting investigations and resolving complaints, subject to appropriations in the annual Budget Act.

(c) (1) The office, in consultation with the California Welfare Directors Association, Chief Probation Officers of California, foster youth advocate and support groups, groups representing children, families, foster parents, children's facilities, and other interested parties, shall develop, no later than July 1, 2002, standardized information explaining the rights specified in Section 16001.9. The information shall be developed in an age-appropriate manner, and shall reflect any relevant licensing requirements with respect to foster care providers' responsibilities to adequately supervise children in care.

(2) The office, counties, foster care providers, and others may use the information developed in paragraph (1) in carrying out their responsibilities to inform foster children and youth of their rights pursuant to Section 1530.91 of the Health and Safety Code, Sections 27 and 16501.1, and this section.

SEC. 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 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. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(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 provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(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. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002.

(10) When out-of-home services are used, the child has been in care for at least 12 months, and the goal 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 completed or updated within the past 12 months 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. When out-of-home services are used with the goal of family

reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(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. 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.

CHAPTER 684

An act to add Section 1276.65 to the Health and Safety Code, and to amend Section 14126.02 of the Welfare and Institutions Code, relating to health facilities.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

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

(1) Skilled nursing facilities need adequate staffing levels in order to provide the quality of care that patients deserve.

(2) Compliance with minimum staffing requirements will be increased if residents, residents' families, facility employees, and state inspectors can determine easily whether or not a skilled nursing facility is in compliance.

(3) It is difficult for residents, residents' families, facility employees, and state inspectors to monitor a skilled nursing facility's compliance with a staffing standard based on the nursing hours per patient day provided by a facility.

(4) The State Department of Health Services is responsible for adopting regulations prescribing the staffing requirements for skilled nursing facilities.

(5) The department is required to examine alternative rate methodology models for a new Medi-Cal reimbursement system for skilled nursing facilities.

(b) It is the intent of the Legislature to enact legislation that does all of the following:

(1) Creates a mechanism to increase minimum staffing requirements to a level that assures high quality care for patients.

(2) Requires that minimum staffing requirements be set forth as ratios of patients per direct caregiver, so that residents, residents' families, facility employees, state inspectors, and others may assist in ensuring compliance with the law.

(c) It is further the intent of the Legislature that the department, consistent with its regulatory responsibility and legislative mandates,

act as expenditiously as possible to implement the provisions of this act to ensure compliance with the timeframes set forth in this act.

SEC. 2. Section 1276.65 is added to the Health and Safety Code, to read:

1276.65. (a) For purposes of this section, the following definitions shall apply:

(1) ''Direct caregiver'' means a registered nurse, as referred to in Section 2732 of the Business and Professions Code, a licensed vocational nurse, as referred to in Section 2864 of the Business and Professions Code, a psychiatric technician, as referred to in Section 4516 of the Business and Professions Code, and a certified nurse assistant, as defined in Section 1337.

(2) ''Skilled nursing facility'' means a skilled nursing facility as defined in subdivision (c) of Section 1250.

(b) A person employed to provide services such as food preparation, housekeeping, laundry, or maintenance services shall not provide nursing care to residents and shall not be counted in determining ratios under this section.

(c) (1) Notwithstanding any other provision of law, the State Department of Health Services shall develop regulations that become effective August 1, 2003, that establish staff-to-patient ratios for direct caregivers working in a skilled nursing facility. These ratios shall include separate licensed nurse staff-to-patient ratios in addition to the ratios established for other direct caregivers.

(2) The department in developing staff-to-patient ratios for direct caregivers and licensed nurses required by this section shall convert the existing requirement under Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code for 3.2 nursing hours per patient day of care and shall ensure that no less care is given than is required pursuant to Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code. Further, the department shall develop the ratios in a manner that minimizes additional state costs, maximizes resident access to care, and takes into account the length of the shift worked. In developing the regulations, the department shall develop a procedure for facilities to apply for a waiver that addresses individual patient needs except that in no instance shall the minimum staff-to-patient ratios be less that the 3.2 nursing hours per patient day required under Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code.

(d) The staffing ratios to be developed pursuant to this section shall be minimum standards only. Skilled nursing facilities shall employ and schedule additional staff as needed to ensure quality resident care based on the needs of individual residents and to ensure compliance with all relevant state and federal staffing requirements.

(e) No later than January 1, 2006, and every five years thereafter, the department shall consult with consumers, consumer advocates, recognized collective bargaining agents, and providers to determine the sufficiency of the staffing standards provided in this section and may adopt regulations to increase the minimum staffing ratios to adequate levels.

(f) In a manner pursuant to federal requirements, effective January 1, 2003, every skilled nursing facility shall post information about staffing levels that include the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. This posting shall include staffing requirements developed pursuant to this section.

(g) (1) Notwithstanding any other provision of law, the department shall inspect for compliance with this section during state and federal periodic inspections including, but not limited to, those inspections required under Section 1422. This inspection requirement shall not limit the department's authority in other circumstances to cite for violations of this section or to inspect for compliance with this section.

(2) A violation of the regulations developed pursuant to this section may constitute a class ''B'', ''A'', or ''AA'' violation pursuant to the standards set forth in Section 1424.

(h) The requirements of this section are in addition to any requirement set forth in Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code.

(i) Initial implementation of the staffing ratio developed pursuant to requirements set forth in this section shall be contingent on an appropriation in the annual Budget Act or another statute.

(j) In implementing this section, the department may contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified individuals and entities not associated with a skilled nursing facility, with demonstrated expertise in long-term care. This subdivision establishes an accelerated process for issuing contracts pursuant to this section and contracts entered into pursuant to this section shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contracts Code.

(k) This section shall not apply to facilities defined in Section 1276.9.

SEC. 3. Section 14126.02 of the Welfare and Institutions Code is amended to read:

14126.02. (a) It is the intent of the Legislature to devise a Medi-Cal long-term care reimbursement methodology that more effectively ensures individual access to appropriate long-term care services, promotes quality resident care, advances decent wages and benefits for nursing home workers, supports provider compliance with all applicable

state and federal requirements, and encourages administrative efficiency.

(b) (1) The department shall implement a facility-specific rate-setting system by August 1, 2004, subject to federal approval, that reflects the costs and staffing levels associated with quality of care for residents in nursing facilities, as defined in subdivision (k) of Section 1250 of the Health and Safety Code, which shall include hospital-based nursing facilities.

(2) The department shall examine several alternative rate methodology models for a new Medi-Cal reimbursement system for skilled nursing facilities to include, but not be limited to, consideration of the following:

(A) Classification of residents based on the resource utilization group system or other appropriate acuity classification system.

(B) Facility specific case mix factors.

(C) Direct care labor based factors.

(D) Geographic or regional differences in the cost of operating facilities and providing resident care.

(E) Facility-specific cost based rate models used in other states.

(c) The department shall submit to the Legislature a status report on the implementation of this section on April 1, 2002, April 1, 2003, and April 1, 2004.

(d) The alternatives for a new system described in paragraph (2) of subdivision (b) shall be developed in consultation with recognized experts with experience in long-term care reimbursement, economists, the Attorney General, the federal Centers for Medicare and Medicaid Services, and other interested parties.

(e) In implementing this section, the department may contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified individuals and entities not associated with a skilled nursing facility, with demonstrated expertise in long-term care reimbursement systems. The rate-setting system specified in subdivision (b) shall be developed with all possible expedience. This subdivision establishes an accelerated process for issuing contracts pursuant to this section and contracts entered into pursuant to this subdivision shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contracts Code.

SEC. 4. The State Department of Health Services may adopt emergency regulations to implement the applicable provisions of this act in accordance with 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 initial adoption

of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare. Initial emergency regulations and the first readoption of those regulations shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the first readoption of those regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations and each shall remain in effect for no more than 180 days.

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.

CHAPTER 685

An act to amend Sections 1250, 1265, 1267.5, 1276.5, 1325.5, 1331, 1337.1, 1337.3, 1417.15, 1417.3, 1420, 1421.1, 1421.2, 1422.5, 1423.5, 1424, 1428.1, 1432, 1437.5, and 1438 of, and to add Sections 1250.6 and 1276.9 to, the Health and Safety Code, and to amend Section 14110.7 of the Welfare and Institutions Code, relating to health facilities.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, ''health facility'' means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) ''General acute care hospital'' means a health facility having a duly constituted governing body with overall administrative and

professional responsibility and an organized medical staff that provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital that exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital that, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

A ''general acute care hospital'' includes a ''rural general acute care hospital.'' However, a ''rural general acute care hospital'' shall not be required by the department to provide surgery and anesthesia services. A ''rural general acute care hospital'' shall meet either of the following conditions:

(1) The hospital meets criteria for designation within peer group six or eight, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982.

(2) The hospital meets the criteria for designation within peer group five or seven, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982, and has no more than 76 acute care beds and is located in a census dwelling place of 15,000 or less population according to the 1980 federal census.

(b) ''Acute psychiatric hospital'' means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) ''Skilled nursing facility'' means a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) ''Intermediate care facility'' means a health facility that provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) ''Intermediate care facility/developmentally disabled habilitative'' means a facility with a capacity of 4 to 15 beds that

provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician and surgeon as not requiring availability of continuous skilled nursing care.

(f) ''Special hospital'' means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff that provides inpatient or outpatient care in dentistry or maternity.

(g) ''Intermediate care facility/developmentally disabled'' means a facility that provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) ''Intermediate care facility/developmentally disabled—nursing'' means a facility with a capacity of 4 to 15 beds that provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) (1) ''Congregate living health facility'' means a residential home with a capacity, except as provided in paragraph (4), of no more than six beds, that provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social, recreational, and at least one type of service specified in paragraph (2). The primary need of congregate living health facility residents shall be for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.

(2) Congregate living health facilities shall provide one of the following services:

(A) Services for persons who are mentally alert, physically disabled persons, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness, a diagnosis of a life-threatening illness, or both. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon. A ''life-threatening illness'' means the individual has an illness that can lead to a possibility of a termination of life within five years or less as stated in writing by his or her attending physician and surgeon.

(C) Services for persons who are catastrophically and severely disabled. A catastrophically and severely disabled person means a person whose origin of disability was acquired through trauma or nondegenerative neurologic illness, for whom it has been determined that active rehabilitation would be beneficial and to whom these services are being provided. Services offered by a congregate living health facility to a catastrophically disabled person shall include, but not be limited to, speech, physical, and occupational therapy.

(3) A congregate living health facility license shall specify which of the types of persons described in paragraph (2) to whom a facility is licensed to provide services.

(4) (A) A facility operated by a city and county for the purposes of delivering services under this section may have a capacity of 59 beds.

(B) A congregate living health facility not operated by a city and county servicing persons who are terminally ill, persons who have been diagnosed with a life-threatening illness, or both, that is located in a county with a population of 500,000 or more persons may have not more than 25 beds for the purpose of serving terminally ill persons.

(C) A congregate living health facility not operated by a city and county serving persons who are catastrophically and severely disabled, as defined in subparagraph (C) of paragraph (2) that is located in a county of 500,000 or more persons may have not more than 12 beds for the purpose of serving catastrophically and severely disabled persons.

(5) A congregate living health facility shall have a noninstitutional, homelike environment.

(j) (1) ''Correctional treatment center'' means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency that, as determined by the state department, provides inpatient health services to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a law enforcement facility that houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of improved access to health care, security, and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the general acute care hospitals at the California Medical Facility, the California Men's Colony, and the California Institution for Men. This subdivision shall not be construed to prohibit the California Department of Corrections from obtaining a correctional treatment center license at these sites.

(k) ''Nursing facility'' means a health facility licensed pursuant to this chapter that is certified to participate as a provider of care either as a skilled nursing facility in the federal Medicare program under Title XVIII of the federal Social Security Act or as a nursing facility in the federal medicaid program under Title XIX of the federal Social Security Act, or as both.

(*l*) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, the Department of Corrections, or the Department of the Youth Authority, shall not become effective prior to, or if effective, shall be inoperative until January 1, 1996, and until that time these correctional facilities are exempt from any licensing requirements.

SEC. 2. Section 1250.6 is added to the Health and Safety Code, to read:

1250.6. Any requirement placed upon, or reference to, a corporation in this chapter, shall also apply to a limited liability company.

SEC. 3. Section 1265 of the Health and Safety Code is amended to read:

1265. Any person, political subdivision of the state, or governmental agency desiring a license for a health facility, approval for a special service under this chapter, or approval to manage a health facility currently licensed as a skilled nursing facility or intermediate care facility, as defined in subdivision (c) or (d) of Section 1250, that has not filed an application for a license to operate that facility shall file with the state department a verified application on forms prescribed and furnished by the state department, containing all of the following:

(a) The name of the applicant and, if an individual, whether the applicant has attained the age of 18 years.

(b) The type of facility or health facility.

(c) The location thereof.

(d) The name of the person in charge thereof.

(e) Evidence satisfactory to the state department that the applicant is of reputable and responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, like evidence shall be submitted as to the members or shareholders thereof, and the person in charge of the health facility for which application for license is made. If the applicant is a political subdivision of the state or other governmental agency, like evidence shall be submitted as to the person in charge of the health facility for which application for license is made.

(f) Evidence satisfactory to the state department of the ability of the applicant to comply with this chapter and of rules and regulations promulgated under this chapter by the state department.

(g) Evidence satisfactory to the department that the applicant to operate a skilled nursing facility or intermediate care facility possesses financial resources sufficient to operate the facility for a period of at least 45 days. A management company shall not be required to submit this information.

(h) Each applicant for a license to operate a skilled nursing facility or intermediate care facility shall disclose to the state department evidence of the right to possession of the facility at the time the application will be granted, that may be satisfied by the submission of a copy of applicable portions of a lease agreement or deed of trust. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and the grounds appurtenant to the buildings, shall be disclosed to the state department.

(i) Any other information as may be required by the state department for the proper administration and enforcement of this chapter.

(j) Upon submission of an application to the state department by an intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled—nursing, the application shall include a statement of need signed by the chairperson of the area board pursuant to Chapter 4 (commencing with Section 4570) of Division 4.5 of the Welfare and Institutions Code. In the event the area board has not provided the statement of need within 30 days of receipt of the request from the applicant, the state department may process the application for license without the statement.

(k) The information required pursuant to this section, other than individuals' social security numbers, shall be made available to the public upon request, and shall be included in the department's public file regarding the facility.

SEC. 4. Section 1267.5 of the Health and Safety Code is amended to read:

1267.5. (a) (1) Each applicant for a license to operate a skilled nursing facility or intermediate care facility shall disclose to the state

department the name and business address of each general partner if the applicant is a partnership, or each director and officer if the applicant is a corporation, and each person having a beneficial ownership interest of 5 percent or more in the applicant corporation or partnership.

(2) If any person described in paragraph (1) has served or currently serves as an administrator, general partner, trustee or trust applicant, sole proprietor of any applicant or licensee who is a sole proprietorship, executor, or corporate officer or director of, or has held a beneficial ownership interest of 5 percent or more in, any other skilled nursing facility or intermediate care facility or in any community care facility licensed pursuant to Chapter 3 (commencing with Section 1500) of this division, the applicant shall disclose the relationship to the state department, including the name and current or last address of the health facility or community care facility and the date the relationship commenced and, if applicable, the date it was terminated.

(3) (A) If the facility is operated by, or proposed to be operated in whole or part under, a management contract, the names and addresses of any person or organization, or both, having an ownership or control interest of 5 percent or more in the management company shall be disclosed to the state department. This provision shall not apply if the management company has submitted an application for licensure with the state department and has complied with paragraph (1).

(B) If the management company is a subsidiary of one or more other organizations, the information shall include the names and addresses of the parent organizations of the management company and the names and addresses of any officer or director of the parent organizations. The failure to comply with this subparagraph may result in action to revoke or deny a license. However, once the information that is required under this subparagraph is provided, the action to revoke the license shall terminate.

(4) If the applicant or licensee is a subsidiary of one or more other organizations, the information shall include the names and addresses of the parent organizations of the subsidiary and the names and addresses of any officer or director of the parent organizations.

(5) The information required by this subdivision shall be provided to the state department upon initial application for licensure, and any change in the information shall be provided to the state department within 30 calendar days of that change.

(6) Except as provided in subparagraph (B) of paragraph (3), the failure to comply with this section may result in action to revoke or deny a license.

(7) The information required by this section shall be made available to the public upon request, shall be included in the public file of the facility, and by July 1, 2002, shall be included in the department's

automated certification licensing administration information management system.

(b) On and after January 1, 1990, no person may acquire a beneficial interest of 5 percent or more in any corporation or partnership licensed to operate a skilled nursing facility or intermediate care facility, or in any management company under contract with a licensee of a skilled nursing facility or intermediate care facility, nor may any person become an officer or director of, or general partner in, a corporation, partnership, or management company of this type without the prior written approval of the state department. Each application for departmental approval pursuant to this subdivision shall include the information specified in subdivision (a) as regards the person for whom the application is made.

The state department shall approve or disapprove the application within 30 days after receipt thereof, unless the state department, with just cause, extends the application review period beyond 30 days.

(c) The state department may deny approval of a license application or of an application for approval under subdivision (b) if a person named in the application, as required by this section, was an officer, director, general partner, or owner of a 5-percent or greater beneficial interest in a licensee of, or in a management company under contract with a licensee of, a skilled nursing facility, intermediate care facility, community care facility, or residential care facility for the elderly at a time when one or more violations of law were committed therein that resulted in suspension or revocation of its license, or at a time when a court-ordered receiver was appointed pursuant to Section 1327, or at a time when a final Medi-Cal decertification action was taken under federal law. However, the prior suspension, revocation, or court-ordered receivership of a license shall not be grounds for denial of the application if the applicant shows to the satisfaction of the state department (1) that the person in question took every reasonably available action to prevent the violation or violations that resulted in the disciplinary action and (2) that he or she took every reasonably available action to correct the violation or violations once he or she knew, or with the exercise of reasonable diligence should have known of, the violation or violations.

(d) No application shall be denied pursuant to this section until the state department first (1) provides the applicant with notice in writing of grounds for the proposed denial of application, and (2) affords the applicant an opportunity to submit additional documentary evidence in opposition to the proposed denial.

(e) Nothing in this section shall cause any individual to be personally liable for any civil penalty assessed pursuant to Chapter 2.4 (commencing with Section 1417) or create any new criminal or civil liability contrary to general laws limiting that liability.

(f) This section shall not apply to a bank, trust company, financial institution, title insurer, controlled escrow company, or underwritten title company to which a license is issued in a fiduciary capacity.

(g) As used in this section, ''person'' has the same meaning as specified in Section 19.

(h) This section shall not apply to the directors of a nonprofit corporation exempt from taxation under Section 23701d of the Revenue and Taxation Code that operates a skilled nursing facility or intermediate care facility in conjunction with a licensed residential facility, where the directors serve without financial compensation and are not compensated by the nonprofit corporation in any other capacity.

SEC. 5. Section 1276.5 of the Health and Safety Code is amended to read:

1276.5. (a) The department shall adopt regulations setting forth the minimum number of equivalent nursing hours per patient required in skilled nursing and intermediate care facilities, subject to the specific requirements of Section 14110.7 of the Welfare and Institutions Code. However, notwithstanding Section 14110.7 or any other provision of law, commencing January 1, 2000, the minimum number of actual nursing hours per patient required in a skilled nursing facility shall be 3.2 hours, except as provided in Section 1276.9.

(b) (1) For the purposes of this section, ''nursing hours'' means the number of hours of work performed per patient day by aides, nursing assistants, or orderlies plus two times the number of hours worked per patient day by registered nurses and licensed vocational nurses (except directors of nursing in facilities of 60 or larger capacity) and, in the distinct part of facilities and freestanding facilities providing care for the developmentally disabled or mentally disordered, by licensed psychiatric technicians who perform direct nursing services for patients in skilled nursing and intermediate care facilities, except when the skilled nursing and intermediate care facility is licensed as a part of a state hospital, and except that nursing hours for skilled nursing facilities means the actual hours of work, without doubling the hours performed per patient day by registered nurses and licensed vocational nurses.

(2) Concurrent with implementation of the first year of rates established under the Medi-Cal Long Term Care Reimbursement Act of 1990 (Article 3.8 (commencing with Section 14126) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code), for the purposes of this section, ''nursing hours'' means the number of hours of work performed per patient day by aides, nursing assistants, registered nurses, and licensed vocational nurses (except directors of nursing in facilities of 60 or larger capacity) and, in the distinct part of facilities and freestanding facilities providing care for the developmentally disabled or mentally disordered, by licensed psychiatric technicians who

performed direct nursing services for patients in skilled nursing and intermediate care facilities, except when the skilled nursing and intermediate care facility is licensed as a part of a state hospital.

(c) Notwithstanding Section 1276, the department shall require the utilization of a registered nurse at all times if the department determines that the services of a skilled nursing and intermediate care facility require the utilization of a registered nurse.

(d) (1) Except as otherwise provided by law, the administrator of an intermediate care facility/developmentally disabled, intermediate care facility/developmentally disabled habilitative, or an intermediate care facility/developmentally disabled—nursing shall be either a licensed nursing home administrator or a qualified mental retardation professional as defined in Section 483.430 of Title 42 of the Code of Federal Regulations.

(2) To qualify as an administrator for an intermediate care facility for the developmentally disabled, a qualified mental retardation professional shall complete at least six months of administrative training or demonstrate six months of experience in an administrative capacity in a licensed health facility, as defined in Section 1250, excluding those facilities specified in subdivisions (e), (h), and (i).

SEC. 6. Section 1276.9 is added to the Health and Safety Code, to read:

1276.9. (a) A special treatment program service unit distinct part shall have a minimum 2.3 nursing hours per patient per day.

(b) For purposes of this section, ''special treatment program service unit distinct part'' means an identifiable and physically separate unit of a skilled nursing facility or an entire skilled nursing facility that provides therapeutic programs to an identified mentally disordered population group.

(c) For purposes of this section, ''nursing hours'' means the number of hours of work performed per patient day by aides, nursing assistants, or orderlies, plus two times the number of hours worked per patient day by registered nurses and licensed vocational nurses (except directors of nursing in facilities of 60 or larger capacity), and, in the distinct part of facilities and freestanding facilities providing care for the developmentally disabled or mentally disordered, by licensed psychiatric technicians who perform direct nursing services for patients in skilled nursing and intermediate care facilities, except when the skilled nursing and intermediate care facility is licensed as a part of a state hospital.

(d) A special treatment program service unit distinct part shall also have an overall average weekly staffing level of 3.2 hours per patient per day, calculated without regard to the doubling of nursing hours, as

described in paragraph (1) of subdivision (b) of Section 1276.5, for the special treatment program service unit distinct part.

(e) The calculation of the overall staffing levels in these facilities for the special treatment program service unit distinct part shall include staff from all of the following categories:

(1) Certified nurse assistants.

(2) Licensed vocational nurses.

(3) Registered nurses.

(4) Licensed psychiatric technicians.

(5) Psychiatrists.

(6) Psychologists.

(7) Social workers.

(8) Program staff who provide rehabilitation, counseling, or other therapeutic services.

SEC. 7. Section 1325.5 of the Health and Safety Code is amended to read:

1325.5. (a) It is the intent of the Legislature in enacting this section to empower the state department to take quick, effective action to protect the health and safety of residents of long-term health care facilities and to minimize the effects of transfer trauma that accompany the abrupt transfer of elderly and disabled residents.

(b) For purposes of this section, ''temporary manager'' means the person, corporation, or other entity, appointed temporarily by the state department as a substitute facility manager or administrator with authority to hire, terminate, or reassign staff, obligate facility funds, alter facility procedures, and manage the facility to correct deficiencies identified in the facility's operation.

(c) The director may appoint a temporary manager when any of the following circumstances exist:

(1) The residents of the long-term health care facility are in immediate danger of death or permanent injury by virtue of the failure of the facility to comply with federal or state requirements applicable to the operation of the facility.

(2) As a result of the change in the status of the license or operation of a long-term health care facility, the facility is required to comply with Section 1336.2, the facility fails to comply with Section 1336.2, and the state department has determined that the facility is unwilling or unable to meet the requirements of Section 1336.2.

(d) Upon appointment, the temporary manager shall take all necessary steps and make best efforts to eliminate immediate danger of death or permanent injury to residents or complete transfer of residents to alternative placements pursuant to Section 1336.2.

(e) (1) The appointment of a temporary manager shall become effective immediately and shall continue until any of the following events occurs:

(A) The temporary manager notifies the department, and the department verifies, that the facility meets state and, if applicable, federal standards for operation, and will be able to continue to maintain compliance with those standards after the termination of temporary management.

(B) A receiver is appointed under this article.

(C) The department approves a new management company.

(D) A new operator is licensed.

(E) The state department closes the facility, through an orderly transfer of the residents.

(F) A hearing or court order ends the temporary manager appointment.

(G) The appointment is terminated by the department or the temporary manager.

(2) The appointment of a temporary manager shall authorize the temporary manager to act pursuant to this section. The appointment shall be made pursuant to an agreement between the temporary manager and the state department that outlines the circumstances under which the temporary manager may expend funds. The temporary manager shall make no long-term capital investments to the facility without the permission of the state department. The state department shall provide the licensee and administrator with a statement of allegations at the time of appointment. Within 48 hours, the department shall provide the licensee and the administrator with a formal statement of cause and concerns. The statement of cause and concerns shall specify the factual and legal basis for the imposition of the temporary manager and shall be supported by the declaration of the director or the director's authorized designee. The statement of cause and concerns shall notify the licensee of the licensee's right to petition the Office of Administrative Hearings for a hearing to contest the appointment of the temporary manager and shall provide the licensee with a form and appropriate information for the licensee's use in requesting a hearing.

(f) (1) The licensee of a long-term health care facility may contest the appointment of the temporary manager by filing a petition for an order to terminate the appointment of the temporary manager with the Office of Administrative Hearings, within 60 days from the date of mailing of the statement of cause and concerns. On the same day as the petition is filed with the Office of Administrative Hearings, the licensee shall deliver a copy of the petition to the office of the director.

(2) Upon receipt of a petition of hearing, the Office of Administrative Hearings shall set a hearing date and time within five business days of

the receipt of the petition. The office shall promptly notify the licensee and the state department of the date, time, and place of the hearing. The office shall assign the case to an administrative law judge. At the hearing, relevant evidence may be presented pursuant to Section 11513 of the Government Code. The administrative law judge shall issue a written decision on the petition within five business days of the conclusion of the hearing. The five-day time periods for holding the hearing and rendering a decision may be extended by the agreement of the parties.

(3) The administrative law judge shall uphold the appointment of the temporary manager if the state department proves, by a preponderance of the evidence, that the circumstances specified in subdivision (c) applied to the facility at the time of the appointment. The administrative law judge shall order the termination of the temporary manager if the burden of proof is not satisfied.

(g) The decision of the administrative law judge is subject to judicial review as provided in Section 1094.5 of the Code of Civil Procedure by the superior court sitting in the county where the facility is located. This review may be requested by the licensee of the facility or the state department by filing a petition seeking relief from the order. The petition may also request the issuance of temporary injunctive relief pending the decision on the petition. The superior court shall hold a hearing within five business days of the filing of the petition and shall issue a decision on the petition within five days of the hearing. The state department may be represented by legal counsel within the state department for purposes of court proceedings authorized under this section.

(h) If the licensee of the long-term health care facility does not protest the appointment, it shall continue in accordance with subdivision (e).

(i) (1) If the licensee of the long-term health care facility petitions the Office of Administrative Hearings pursuant to subdivision (f), the appointment of the temporary manager by the director pursuant to this section shall continue until it is terminated by the administrative law judge or by the superior court, or it shall continue for 30 days from the date the administrative law judge or the superior court upholds the appointment of the temporary manager, whichever is earlier.

(2) At any time during the appointment of the temporary manager, the director may request an extension of the appointment by filing a petition for hearing with the Office of Administrative Hearings and serving a copy of the petition on the licensee. The office shall proceed as specified in paragraph (2) of subdivision (f). The administrative law judge may extend the appointment of the temporary manager as follows:

(A) Upon a showing by the state department that the conditions specified in subdivision (c) continue to exist, an additional 60 days.

(B) Upon a finding that the state department is seeking a receiver, until the state department has secured the services of a receiver pursuant to this article.

(3) The licensee or the state department may request review of the administrative law judge's decision on the extension as provided in subdivision (g).

(j) The temporary manager appointed pursuant to this section shall meet the following qualifications:

(1) Be qualified to oversee correction of deficiencies on the basis of experience and education.

(2) Not have been found guilty of misconduct by any licensing board.

(3) Have no financial ownership interest in the facility and have no member of his or her immediate family who has a financial ownership interest in the facility.

(4) Not currently serve, or within the past two years have served, as a member of the staff of the facility.

(5) Be acceptable to the facility.

(k) Payment of the temporary manager's salary or fee shall comply with the following requirements:

(1) Shall be paid directly by the facility while the temporary manager is assigned to that facility.

(2) Shall be equivalent to the sum of the following:

(A) The prevailing salary or fee paid by licensees for positions of the same type in the facility's geographic area.

(B) Additional costs that reasonably would have been incurred by the licensee if the licensee had been in an employment relationship.

(C) Any other reasonable costs incurred by the appointed temporary manager in furnishing services pursuant to this section.

(3) May exceed the amount specified in paragraph (2) if the department is otherwise unable to attract a qualified temporary manager.

(*l*) The state department may use funds from the Health Facilities Citation Penalties Account, pursuant to Section 1417.2, to operate the facility after all other facility revenues are exhausted.

(m) The state department shall adopt regulations for the administration of this section on or before December 31, 2001.

SEC. 8. Section 1331 of the Health and Safety Code is amended to read:

1331. (a) The receiver shall be appointed for an initial period of not more than six months. The initial six-month period may be extended for additional periods not exceeding six months, as determined by the court pursuant to this section. At the end of four months, the receiver shall report to the court on its assessment of the probability that the long-term health care facility will meet state standards for operation by the end of the initial six-month period and will continue to maintain compliance

with those standards after termination of the receiver's management. If it appears that the facility cannot be brought into compliance with state standards within the initial six-month period, the court shall take appropriate action as follows:

(1) Extend the receiver's management for an additional six months if there is a substantial likelihood that the facility will meet state standards within that period and will maintain compliance with the standards after termination of the receiver's management. The receiver shall report to the court in writing upon the facility's progress at the end of six weeks of any extension ordered pursuant to this paragraph.

(2) Order the director to revoke or temporarily suspend, or both, the license pursuant to Section 1296 and extend the receiver's management for the period necessary to transfer patients in accordance with the transfer plan, but for not more than six months from the date of initial appointment of a receiver, or 14 days, whichever is greater. An extension of an additional six months may be granted if deemed necessary by the court.

(b) If it appears at the end of six weeks of an extension ordered pursuant to paragraph (1) of subdivision (a) that the facility cannot be brought into compliance with state standards for operation or that it will not maintain compliance with those standards after the receiver's management is terminated, the court shall take appropriate action as specified in paragraph (2) of subdivision (a).

(c) In evaluating the probability that a long-term health care facility will maintain compliance with state standards of operation after the termination of receiver management ordered by the court, the court shall consider at least the following factors:

(1) The duration, frequency, and severity of past violations in the facility.

(2) History of compliance in other long-term health care facilities operated by the proposed licensee.

(3) Efforts by the licensee to prevent and correct past violations.

(4) The financial ability of the licensee to operate in compliance with state standards.

(5) The recommendations and reports of the receiver.

(d) Management of a long-term health care facility operated by a receiver pursuant to this article shall not be returned to the licensee, to any person related to the licensee, or to any person who served as a member of the facility's staff or who was employed by the licensee prior to the appointment of the receiver unless both of the following conditions are met:

(1) The department believes that it would be in the best interests of the residents of the facility, requests that the court return the operation of the facility to the former licensee, and provides clear and convincing

evidence to the court that it is in the best interests of the facility's residents to take that action.

(2) The court finds that the licensee has fully cooperated with the department in the appointment and ongoing activities of a receiver appointed pursuant to this section, and, if applicable, any temporary manager appointed pursuant to Section 1325.5.

(e) The owner of the facility may at any time sell, lease, or close the facility, subject to the following provisions:

(1) If the owner closes the facility, or the sale or lease results in the closure of the facility, the court shall determine if a transfer plan is necessary. If the court so determines, the court shall adopt and implement a transfer plan of not more than 30 days.

(2) If the licensee proposes to sell or lease the facility and the facility will continue to operate as a long-term health care facility, the court and the state department shall reevaluate any proposed transfer plan. If the court and the state department determine that the sale or lease of the facility will result in compliance with licensing standards, the transfer plan and the receivership shall, subject to those conditions that the court may impose and enforce, be terminated upon the effective date of the sale or lease.

SEC. 9. Section 1337.1 of the Health and Safety Code is amended to read:

1337.1. A skilled nursing or intermediate care facility shall adopt an approved training program that meets standards established by the state department. The approved training program shall consist of at least the following:

(a) An orientation program to be given to newly employed nurse assistants prior to providing direct patient care in skilled nursing or intermediate care facilities.

(b) (1) A precertification training program consisting of at least 60 classroom hours of training on basic nursing skills, patient safety and rights, the social and psychological problems of patients, and resident abuse prevention, recognition, and reporting pursuant to subdivision (e). The 60 classroom hours of training may be conducted within a skilled nursing or intermediate care facility or in an educational institution.

(2) In addition to the 60 classroom hours of training required under paragraph (1), the precertification training program shall consist of at least 100 hours of supervised and on-the-job training clinical practice. The 100 hours may consist of normal employment as a nurse assistant under the supervision of either the director of nurse training or a licensed nurse qualified to provide nurse assistant training who has no other assigned duties while providing the training.

(3) At least two hours of the 60 hours of classroom training and at least four hours of the 100 hours of the supervised clinical training shall

address the special needs of persons with developmental and mental disorders, including mental retardation, Alzheimer's disease, cerebral palsy, epilepsy, dementia, Parkinson's disease, and mental illness.

(4) In a precertification training program subject to this subdivision, credit shall be given for the training received in an approved precertification training program adopted by another skilled nursing or intermediate care facility.

(5) This subdivision shall not apply to a skilled nursing or intermediate care facility that demonstrates to the state department that it employs only nurse assistants with a valid certification.

(c) Continuing in-service training to assure continuing competency in existing and new nursing skills.

(d) Each facility shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS).

(e) (1) The approved training program shall include, within the 60 hours of classroom training, a minimum of six hours of instruction on preventing, recognizing, and reporting instances of resident abuse utilizing those courses developed pursuant to Section 13823.93 of the Penal Code.

(2) A minimum of four hours of instruction on preventing, recognizing, and reporting instances of resident abuse shall be included within the total minimum hours of continuing education or in-service training required and in effect for certified nursing assistants.

SEC. 10. Section 1337.3 of the Health and Safety Code is amended to read:

1337.3. (a) The state department shall prepare and maintain a list of approved training programs for nurse assistant certification. The list shall include training programs conducted by skilled nursing or intermediate care facilities, as well as local agencies and education programs. In addition, the list shall include information on whether a training center is currently training nurse assistants, their competency test pass rates, and the number of nurse assistants they have trained. Clinical portions of the training programs may be obtained as on-the-job training, supervised by a qualified director of staff development or licensed nurse.

(b) It shall be the duty of the state department to inspect a representative sample of training programs. The state department shall protect consumers and students in any training program against fraud, misrepresentation, or other practices that may result in improper or excessive payment of funds paid for training programs. In evaluating a training center's training program, the state department shall examine each training center's trainees' competency test passage rate, and require each program to maintain an average 60 percent test score passage rate

to maintain its participation in the program. The average test score passage rate shall be calculated over a two-year period. If the state department determines that any training program is not complying with regulations or is not meeting the competency passage rate requirements, notice thereof in writing shall be immediately given to the program. If the program has not been brought into compliance within a reasonable time, the program may be removed from the approved list and notice thereof in writing given to it. Programs removed under this article shall be afforded an opportunity to request reinstatement of program approval at any time. The state department's district offices shall inspect facility-based centers as part of their annual survey.

(c) Notwithstanding Section 1337.1, the approved training program shall consist of at least the following:

(1) A 16-hour orientation program to be given to newly employed nurse assistants prior to providing direct patient care, and consistent with federal training requirements for facilities participating in the Medicare or medicaid programs.

(2) (A) A certification training program consisting of at least 60 classroom hours of training on basic nursing skills, patient safety and rights, the social and psychological problems of patients, and elder abuse recognition and reporting pursuant to subdivision (e) of Section 1337.1. The 60 classroom hours of training may be conducted within a skilled nursing facility, an intermediate care facility, or an educational institution.

(B) In addition to the 60 classroom hours of training required under subparagraph (A), the certification program shall also consist of 100 hours of supervised and on-the-job training clinical practice. The 100 hours may consist of normal employment as a nurse assistant under the supervision of either the director of staff development or a licensed nurse qualified to provide nurse assistant training who has no other assigned duties while providing the training.

(3) At least two hours of the 60 hours of classroom training and at least four hours of the 100 hours of the supervised clinical training shall address the special needs of persons with developmental and mental disorders, including mental retardation, Alzheimer's disease, cerebral palsy, epilepsy, dementia, Parkinson's disease, and mental illness.

(d) The state department, in consultation with the State Department of Education and other appropriate organizations, shall develop criteria for approving training programs, that includes program content for orientation, training, inservice and the examination for testing knowledge and skills related to basic patient care services and shall develop a plan that identifies and encourages career ladder opportunities for certified nurse assistants. This group shall also recommend, and the department shall adopt, regulation changes necessary to provide for

patient care when facilities utilize noncertified nurse assistants who are performing direct patient care. The requirements of this subdivision shall be established by January 1, 1989.

(e) On or before January 1, 2004, the state department, in consultation with the State Department of Education, the American Red Cross, and other appropriate organizations, shall do the following:

(1) Review the current examination for approved training programs for certified nurse assistants to ensure the accurate assessment of whether a nurse assistant has obtained the required knowledge and skills related to basic patient care services.

(2) Develop a plan that identifies and encourages career ladder opportunities for certified nurse assistants, including the application of on-the-job post-certification hours to educational credits.

(f) A skilled nursing or intermediate care facility shall determine the number of specific clinical hours within each module identified by the state department required to meet the requirements of subdivision (d), subject to subdivisions (b) and (c). The facility shall consider the specific hours recommended by the state department when adopting the certification training program required by this chapter.

(g) This article shall not apply to a program conducted by any church or denomination for the purpose of training the adherents of the church or denomination in the care of the sick in accordance with its religious tenets.

(h) The Chancellor of the California Community Colleges shall provide to the state department a standard process for approval of college credit. The state department shall make this information available to all training programs in the state.

SEC. 11. Section 1417.15 of the Health and Safety Code is amended to read:

1417.15. (a) (1) If one or more of the following remedies is actually imposed for violation of state or federal requirements, the long-term health care facility shall post a notice of the imposed remedy or remedies, in the form specified in subdivision (c), on all doors providing ingress to or egress from the facility, except as specified in paragraph (2):

(A) License suspension.

(B) Termination of certification for Medicare or Medi-Cal.

(C) Denial of payment by Medicare or Medi-Cal for all otherwise eligible residents.

(D) Denial of payment by Medicare or Medi-Cal for otherwise eligible incoming residents.

(E) Ban on admission of any type.

(2) For purposes of this subdivision, a distinct part nursing facility shall only be required to post the notice on all main doors providing

ingress to or egress from the distinct part, and not on all of the doors providing ingress to or egress from the facility. An intermediate care facility/developmentally disabled habilitative and an intermediate care facility/developmentally disabled-nursing shall post this notice on the inside of all doors providing ingress to or egress from the facility.

(b) A violation of the requirement of subdivision (a) shall be issued and enforced in the manner of a class ''B'' violation.

(c) The form of the notice established pursuant to subdivision (a) shall be entitled ''Notice of Violation Remedies.'' Each notice shall list the remedy or remedies imposed, as set forth in subdivision (a), and shall include the date the remedy was imposed. The notice shall be typeset on white bond paper, 8 $^{1}/_{2}$ x 11 inches in size, in boldface black type in a 16-point sans serif type font. A facility may remove the notice on or after the date on which the sanction is lifted.

SEC. 12. Section 1417.3 of the Health and Safety Code is amended to read:

1417.3. The department shall promote quality of care and quality of life for residents, clients, and patients in long-term health care facility services through specific activities that include, but are not limited to, all of the following:

(a) Research and evaluation of innovative facility resident care models.

(b) (1) Provision of statewide training on effective facility practices.

(2) Training also shall include topics related to the provision of quality of care and quality of life for facility residents. The topics for training shall be identified by the department through a periodic survey. The curriculum for the training provided under this paragraph shall be developed in consultation with representatives from provider associations, consumer associations, and others, as deemed appropriate by the state department.

(c) The establishment of separate units to respond to facility requests for technical assistance regarding licensing and certification requirements, compliance with federal and state standards, and related operational issues.

(d) State employees providing technical assistance to facilities pursuant to this section are only required to report violations they discover during the provision of the assistance to the appropriate district office if the violations constitute an immediate and serious threat to the health and welfare of, or have resulted in actual harm to, patients, residents, or clients of the facility.

(e) The state department shall measure facility satisfaction and the effectiveness of the technical assistance provided pursuant to subdivision (c).

(f) No person employed in the technical assistance or training units under subdivisions (b) and (c) shall also participate in the licensing, surveying, or direct regulation of facilities.

(g) This section shall not diminish the department's ongoing survey and enforcement process.

SEC. 13. Section 1420 of the Health and Safety Code is amended to read:

1420. (a) (1) Upon receipt of a written or oral complaint, the state department shall assign an inspector to make a preliminary review of the complaint and shall notify the complainant within two working days of the receipt of the complaint of the name of the inspector. Unless the state department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite inspection or investigation within 10 working days of the receipt of the complaint. In any case in which the complaint involves a threat of imminent danger of death or serious bodily harm, the state department shall make an onsite inspection or investigation within 24 hours of the receipt of the complaint. In any event, the complainant shall be promptly informed of the state department's proposed course of action and of the opportunity to accompany the inspector on the inspection or investigation of the facility. Upon the request of either the complainant or the state department, the complainant or his or her representative, or both, may be allowed to accompany the inspector to the site of the alleged violations during his or her tour of the facility, unless the inspector determines that the privacy of any patient would be violated thereby.

(2) When conducting an onsite inspection or investigation pursuant to this section, the state department shall collect and evaluate all available evidence and may issue a citation based upon, but not limited to, all of the following:

(A) Observed conditions.

(B) Statements of witnesses.

(C) Facility records.

(3) Within 10 working days of the completion of the complaint investigation, the state department shall notify the complainant and licensee in writing of the department's determination as a result of the inspection or investigation.

(b) Upon being notified of the state department's determination as a result of the inspection or investigation, a complainant who is dissatisfied with the state department's determination, regarding a matter which would pose a threat to the health, safety, security, welfare, or rights of a resident, shall be notified by the state department of the right to an informal conference, as set forth in this section. The complainant may, within five business days after receipt of the notice,

notify the director in writing of his or her request for an informal conference. The informal conference shall be held with the designee of the director for the county in which the long-term health care facility which is the subject of the complaint is located. The long-term health care facility may participate as a party in this informal conference. The director's designee shall notify the complainant and licensee of his or her determination within 10 working days after the informal conference and shall apprise the complainant and licensee in writing of the appeal rights provided in subdivision (c).

(c) If the complainant is dissatisfied with the determination of the director's designee in the county in which the facility is located, the complainant may, within 15 days after receipt of this determination, notify in writing the Deputy Director of the Licensing and Certification Division of the state department, who shall assign the request to a representative of the Complainant Appeals Unit for review of the facts that led to both determinations. As a part of the Complainant Appeals Unit's independent investigation, and at the request of the complainant, the representative shall interview the complainant in the district office where the complaint was initially referred. Based upon this review, the Deputy Director of the Licensing and Certification Division of the state department shall make his or her own determination and notify the complainant and the facility within 30 days.

(d) Any citation issued as a result of a conference or review provided for in subdivision (b) or (c) shall be issued and served upon the facility within three working days of the final determination, unless the licensee agrees in writing to an extension of this time. Service shall be effected either personally or by registered or certified mail. A copy of the citation shall also be sent to each complainant by registered or certified mail.

(e) A miniexit conference shall be held with the administrator or his or her representative upon leaving the facility at the completion of the investigation to inform him or her of the status of the investigation. The department shall also state the items of noncompliance and compliance found as a result of a complaint and those items found to be in compliance, provided the disclosure maintains the anonymity of the complainant. In any matter in which there is a reasonable probability that the identity of the complainant will not remain anonymous, the state department shall also notify the facility that it is unlawful to discriminate or seek retaliation against a resident, employee, or complainant.

(f) For purposes of this section, ''complaint'' means any oral or written notice to the state department, other than a report from the facility of an alleged violation of applicable requirements of state or federal law or any alleged facts that might constitute such a violation.

SEC. 14. Section 1421.1 of the Health and Safety Code is amended to read:

1421.1. (a) Within 24 hours of the occurrence of any of the events specified in subdivision (b), the licensee of a skilled nursing facility shall notify the department of the occurrence. This notification may be in written form if it is provided by telephone facsimile or overnight mail, or by telephone with a written confirmation within five calendar days. The information provided pursuant to this subdivision may not be released to the public by the department unless its release is needed to justify an action taken by the department or it otherwise becomes a matter of public record. A violation of this section is a class ''B'' violation.

(b) All of the following occurrences shall require notification pursuant to this section:

(1) The licensee of a facility receives notice that a judgment lien has been levied against the facility or any of the assets of the facility or the licensee.

(2) A financial institution refuses to honor a check or other instrument issued by the licensee to its employees for a regular payroll.

(3) The supplies, including food items and other perishables, on hand in the facility fall below the minimum specified by any applicable statute or regulation.

(4) The financial resources of the licensee fall below the amount needed to operate the facility for a period of at least 45 days based on the current occupancy of the facility. The determination that financial resources have fallen below the amount needed to operate the facility shall be based upon the current number of occupied beds in the facility multiplied by the current daily Medi-Cal reimbursement rate multiplied by 45 days.

(5) The licensee fails to make timely payment of any premiums required to maintain required insurance policies or bonds in effect, or any tax lien levied by any government agency.

SEC. 15. Section 1421.2 of the Health and Safety Code is amended to read:

1421.2. (a) There is hereby established in the state department the Skilled Nursing Facility Financial Solvency Advisory Board.

(b) The board shall be composed of eight members.

The members shall consist of the director, or the director's designee, and seven members appointed by the director.

The seven members appointed by the director may be, but are not necessarily limited to, individuals with training and experience in the following areas or fields:

(1) Medical and health care economics.

(2) Consumer advocacy or representation.

(3) Nursing facility employee organizations.

(4) Accountancy.

(5) Research or actuarial studies in the area of skilled nursing facilities.

(6) Management or administration of skilled nursing facilities.

(c) One of the members appointed by the director shall be a representative of a collective bargaining agent.

(d) The purpose of the board shall be to do all of the following:

(1) Advise the director on matters of financial solvency affecting the delivery of services in skilled nursing facilities.

(2) Develop and recommend to the director financial solvency licensing requirements and standards relating to the operation of skilled nursing facilities.

(3) Periodically monitor and report on the implementation and results of the financial solvency licensing requirements and standards.

(e) The board shall meet at least quarterly and at the call of the chair. In order to preserve the independence of the board, the director shall not serve as chair. The members of the board may establish their own rules and procedures.

(f) All members shall serve without compensation, but shall be reimbursed from department funds for expenses actually and necessarily incurred in the performance of their duties.

(g) For purposes of this section, ''board'' means the Skilled Nursing Facility Financial Solvency Advisory Board.

(h) Financial solvency licensing requirements and standards recommended to the director by the board may be approved by the director after a period of review and comment not to exceed 45 days, for adoption as regulations as proposed or modified under 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). During the director's 45-day review and comment period, the director, in consultation with the board, may postpone the adoption of the licensing requirements and standards pending further review and comment.

(i) The board shall report to the director on or before July 1, 2002, on its recommendations.

(j) 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. 16. Section 1422.5 of the Health and Safety Code is amended to read:

1422.5. (a) The department shall develop and establish a consumer information service system to provide updated and accurate information to the general public and consumers regarding long-term care facilities in their communities. The consumer information service system shall include, but need not be limited to, all of the following elements:

(1) An on-line inquiry system accessible through a statewide toll-free telephone number and the Internet.

(2) Long-term health care facility profiles, with data on services provided, a history of all citations and complaints for the last two full survey cycles, and ownership information. The profile for each facility shall include, but not be limited to, all of the following:

(A) The name, address, and telephone number of the facility.

(B) The number of units or beds in the facility.

(C) Whether the facility accepts Medicare or Medi-Cal patients.

(D) Whether the facility has a special care unit or program for people with Alzheimer's disease and other dementias, and whether the facility participates in the voluntary disclosure program for special care units.

(E) Whether the facility is a for-profit or not-for-profit provider.

(3) Information regarding substantiated complaints shall include the action taken and the date of action.

(4) Information regarding the state citations assessed shall include the status of the state citation, including the facility's plan or correction, and information as to whether an appeal has been filed.

(5) Any appeal resolution pertaining to a citation or complaint shall be updated on the file in a timely manner.

(b) Where feasible, the department shall interface the consumer information service system with its Automated Certification and Licensure Information Management System.

(c) It is the intent of the Legislature that the department, in developing and establishing the system pursuant to subdivision (a), maximize the use of available federal funds.

(d) (1) Notwithstanding the consumer information service system established pursuant to subdivision (a), by January 1, 2002, the state department shall develop a method whereby information is provided to the public and consumers on long-term health care facilities. The information provided shall include, but not be limited to, all of the following elements:

(A) Substantiated complaints, including the action taken and the date of the action.

(B) State citations assessed, including the status of any citation and whether an appeal has been filed.

(C) State actions, including license suspensions, revocations, and receiverships.

(D) Federal enforcement sanctions imposed, including any denial of payment, temporary management, termination, or civil money penalty of five hundred dollars ($500) or more.

(E) Any information or data beneficial to the public and consumers.

(2) This subdivision shall become inoperative on July 1, 2003.

(e) In implementing this section, the department shall ensure the confidentiality of personal and identifying information of residents and employees and shall not disclose this information through the consumer information service system developed pursuant to this section.

SEC. 17. Section 1423.5 of the Health and Safety Code is amended to read:

1423.5. (a) The state department shall centrally review federal deficiencies and supporting documentation that may require the termination of certification for a nursing facility. The state department shall develop a standardized methodology for conducting the central review of these deficiencies. The standardized methodology shall assess all of the following:

(1) The extent to which the survey team followed established survey protocols.

(2) The thoroughness of the investigation or review.

(3) The quality of documentation.

(4) The consistency in interpreting federal requirements.

(b) The state department shall develop a system for tracking patterns and a quality assurance process for preventing, detecting, and correcting inconsistent or poor quality survey practices.

(c) (1) On or before December 1 of each year, the state department shall provide to the Legislature a summary of federal and state enforcement actions taken against nursing facilities during the previous state fiscal year.

(2) The report summarizing federal and state enforcement actions required under this subdivision shall be combined with the report required under Section 1438 into a single report. The time period for each report shall cover the previous state fiscal year.

SEC. 18. Section 1424 of the Health and Safety Code is amended to read:

1424. Citations issued pursuant to this chapter shall be classified according to the nature of the violation and shall indicate the classification on the face thereof.

(a) In determining the amount of the civil penalty, all relevant facts shall be considered, including, but not limited to, the following:

(1) The probability and severity of the risk that the violation presents to the patient's or resident's mental and physical condition.

(2) The patient's or resident's medical condition.

(3) The patient's or resident's mental condition and his or her history of mental disability or disorder.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(b) Relevant facts considered by the department in determining the amount of the civil penalty shall be documented by the department on an attachment to the citation and available in the public record. This requirement shall not preclude the department or a facility from introducing facts not listed on the citation to support or challenge the amount of the civil penalty in any proceeding set forth in Section 1428.

(c) Class ''AA'' violations are violations that meet the criteria for a class ''A'' violation and that the state department determines to have been a direct proximate cause of death of a patient or resident of a long-term health care facility. Except as provided in Section 1424.5, a class ''AA'' citation is subject to a civil penalty in the amount of not less than five thousand dollars ($5,000) and not exceeding twenty-five thousand dollars ($25,000) for each citation. In any action to enforce a citation issued under this subdivision, the state department shall prove all of the following:

(1) The violation was a direct proximate cause of death of a patient or resident.

(2) The death resulted from an occurrence of a nature that the regulation was designed to prevent.

(3) The patient or resident suffering the death was among the class of persons for whose protection the regulation was adopted.

If the state department meets this burden of proof, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

Except as provided in Section 1424.5, for each class ''AA'' citation within a 12-month period that has become final, the state department shall consider the suspension or revocation of the facility's license in accordance with Section 1294. For a third or subsequent class ''AA'' citation in a facility within that 12-month period that has been sustained following a citation review conference, the state department shall commence action to suspend or revoke the facility's license in accordance with Section 1294.

(d) Class ''A'' violations are violations which the state department determines present either (1) imminent danger that death or serious harm to the patients or residents of the long-term health care facility would result therefrom, or (2) substantial probability that death or serious physical harm to patients or residents of the long-term health care facility would result therefrom. A physical condition or one or more practices, means, methods, or operations in use in a long-term health care facility may constitute a class ''A'' violation. The condition or practice constituting a class ''A'' violation shall be abated or eliminated immediately, unless a fixed period of time, as determined by the state

department, is required for correction. Except as provided in Section 1424.5, a class ''A'' citation is subject to a civil penalty in an amount not less than one thousand dollars ($1,000) and not exceeding ten thousand dollars ($10,000) for each and every citation.

If the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

(e) Class ''B'' violations are violations that the state department determines have a direct or immediate relationship to the health, safety, or security of long-term health care facility patients or residents, other than class ''AA'' or ''A'' violations. Unless otherwise determined by the state department to be a class ''A'' violation pursuant to this chapter and rules and regulations adopted pursuant thereto, any violation of a patient's rights as set forth in Sections 72527 and 73523 of Title 22 of the California Code of Regulations, that is determined by the state department to cause or under circumstances likely to cause significant humiliation, indignity, anxiety, or other emotional trauma to a patient is a class ''B'' violation. A class ''B'' citation is subject to a civil penalty in an amount not less than one hundred dollars ($100) and not exceeding one thousand dollars ($1,000) for each and every citation. A class ''B'' citation shall specify the time within which the violation is required to be corrected. If the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

In the event of any citation under this paragraph, if the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

(f) (1) Any willful material falsification or willful material omission in the health record of a patient of a long-term health care facility is a violation.

(2) ''Willful material falsification,'' as used in this section, means any entry in the patient health care record pertaining to the administration of medication, or treatments ordered for the patient, or pertaining to services for the prevention or treatment of decubitus ulcers or contractures, or pertaining to tests and measurements of vital signs, or notations of input and output of fluids, that was made with the

knowledge that the records falsely reflect the condition of the resident or the care or services provided.

(3) ''Willful material omission,'' as used in this section, means the willful failure to record any untoward event that has affected the health, safety, or security of the specific patient, and that was omitted with the knowledge that the records falsely reflect the condition of the resident or the care or services provided.

(g) Except as provided in subdivision (a) of Section 1425.5, a violation of subdivision (f) may result in a civil penalty not to exceed ten thousand dollars ($10,000), as specified in paragraphs (1) to (3), inclusive.

(1) The willful material falsification or willful material omission is subject to a civil penalty of not less than two thousand five hundred dollars ($2,500) or more than ten thousand dollars ($10,000) in instances where the health care record is relied upon by a health care professional to the detriment of a patient by affecting the administration of medications or treatments, the issuance of orders, or the development of plans of care. In all other cases, violations of this subdivision are subject to a civil penalty not exceeding two thousand five hundred dollars ($2,500).

(2) Where the penalty assessed is one thousand dollars ($1,000) or less, the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class ''B'' violation, and shall include the right of appeal as specified in Section 1428. Where the assessed penalty is in excess of one thousand dollars ($1,000), or for skilled nursing facilities or intermediate care facilities as specified in paragraphs (1) and (2) of subdivision (a) of Section 1418, in excess of two thousand dollars ($2,000), the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class ''A'' violation, and shall include the right of appeal as specified in Section 1428.

Nothing in this section shall be construed as a change in previous law enacted by Chapter 11 of the Statutes of 1985 relative to this paragraph, but merely as a clarification of existing law.

(3) Nothing in this subdivision shall preclude the state department from issuing a class ''A'' or class ''B'' citation for any violation that meets the requirements for that citation, regardless of whether the violation also constitutes a violation of this subdivision. However, no single act, omission, or occurrence may be cited both as a class ''A'' or class ''B'' violation and as a violation of this subdivision.

(h) Where the licensee has failed to post the notices as required by Section 9718 of the Welfare and Institutions Code in the manner required under Section 1422.6, the state department shall assess the licensee a civil penalty in the amount of one hundred dollars ($100) for each day

the failure to post the notices continues. Where the total penalty assessed is less than two thousand dollars ($2,000), the violation shall be issued and enforced in the same manner as a class ''B'' violation, and shall include the right of appeal as specified in Section 1428. Where the assessed penalty is equal to or in excess of two thousand dollars ($2,000), the violation shall be issued and enforced in the same manner as a class ''A'' violation and shall include the right of appeal as specified in Section 1428. Any fines collected pursuant to this subdivision shall be used to fund the costs incurred by the California Department of Aging in producing and posting the posters.

(i) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to patient safety or health.

(j) The department shall provide a copy of all citations issued under this section to the affected residents whose treatment was the basis for the issuance of the citation, to the affected residents' designated family member or representative of each of the residents, and to the complainant if the citation was issued as a result of a complaint.

(k) Nothing in this section is intended to change existing statutory or regulatory requirements governing the ability of a licensee to contest a citation pursuant to Section 1428.

(*l*) The department shall ensure that district office activities performed under Sections 1419 to 1424, inclusive, are consistent with the requirements of these sections and all applicable laws and regulations. To ensure the integrity of these activities, the department shall establish a statewide process for the collection of postsurvey evaluations from affected facilities.

SEC. 19. Section 1428.1 of the Health and Safety Code is amended to read:

1428.1. Except as provided in subdivision (b) of Section 1424.5, a licensee may, in lieu of contesting a citation pursuant to Section 1428, transmit to the state department the minimum amount specified by law, or 65 percent of the amount specified in the citation, whichever is greater, for each violation within 15 business days after the issuance of the citation.

SEC. 20. Section 1432 of the Health and Safety Code is amended to read:

1432. (a) No licensee shall discriminate or retaliate in any manner against any complainant, or any patient or employee in its long-term health care facility, on the basis or for the reason that the complainant, patient, employee, or any other person has presented a grievance or complaint, or has initiated or cooperated in any investigation or proceeding of any governmental entity relating to care, services, or conditions at that facility. A licensee who violates this section is subject

to a civil penalty of no more than ten thousand dollars ($10,000), to be assessed by the director and collected in the manner provided in Section 1430.

(b) Any attempt to expel a patient from a long-term health care facility, or any type of discriminatory treatment of a patient by whom, or upon whose behalf, a grievance or complaint has been submitted, directly or indirectly, to any governmental entity or received by a long-term health care facility administrator or any proceeding instituted under or related to this chapter within 180 days of the filing of the complaint or the institution of the action, shall raise a rebuttable presumption that the action was taken by the licensee in retaliation for the filing of the complaint.

(c) Any attempt to terminate the employment, or other discriminatory treatment, of any employee who has presented a grievance or complaint or has initiated, participated, or cooperated in any investigation or proceeding of any governmental entity as specified in subdivision (a), and where the facility or licensee had knowledge of the employee's initiation, participation, or cooperation, shall raise a rebuttable presumption that the action was taken by the licensee in retaliation if it occurs within 120 days of the filing of the grievance or complaint, or the institution of the action.

(d) Presumptions provided for in subdivisions (b) and (c) shall be presumptions affecting the burden of producing evidence as provided in Section 603 of the Evidence Code.

(e) Where the civil penalty assessed is one thousand dollars ($1,000) or less, the violation shall be issued and enforced in the same manner as a class ''B'' violation, except in no case shall the penalty be trebled. Where the civil penalty assessed is in excess of one thousand dollars ($1,000), the violation shall be issued and enforced in the same manner as a class ''A'' violation, except in no case shall the penalty be trebled.

(f) Any person who willfully violates this section is guilty of an infraction punishable by a fine of not more than ten thousand dollars ($10,000).

(g) A licensee who violates this section is subject to a civil penalty or a criminal fine, but not both.

(h) Each long-term health care facility shall prominently post in a facility location accessible to staff, patients, and visitors written notice of the right to request an inspection pursuant to Section 1419, the procedure for doing so, including the right to remain anonymous, and the prohibition against retaliation.

(i) For purposes of this section, ''complainant'' means any person who has filed a complaint, as defined in Section 1420.

SEC. 21. Section 1437.5 of the Health and Safety Code is amended to read:

1437.5. (a) If a facility is certified to participate in the federal Medicare program as a skilled nursing facility under Title XVIII of the Social Security Act, in the medicaid program as a nursing facility under Title XIX of the Social Security Act, or in both and any of the following occurs, the state department may rescind its regular license to operate and issue a provisional license under Section 1437:

(1) The facility's provider agreement is terminated, by the federal government or the department.

(2) A temporary manager is appointed, under federal law, to operate it.

(3) Payment becomes due on a federal civil money penalty of seven thousand dollars ($7,000) per day, or greater, imposed on it.

(4) A federal civil monetary penalty of any amount is imposed and has continued for a period of 30 days or more.

(5) A federal civil monetary penalty of any amount is imposed and has accrued in an amount equal to, or greater than, thirty-five thousand dollars ($35,000).

(b) The state department may not take action pursuant to subdivision (a) until a final administrative decision is issued if the facility has requested a hearing pursuant to federal law, until a facility has waived its right to a hearing under federal law, or until the time for requesting a hearing under federal law has expired and a hearing request was not received by federal authorities.

(c) If a receiver or temporary manager is appointed to operate a skilled nursing facility or an intermediate care facility, specified in paragraphs (1) and (2) of subdivision (a) of Section 1418, pursuant to state law, or as otherwise specified in regulations adopted by the department, the state department may rescind its regular license to operate and issue a provisional license under this section.

(d) (1) A provisional license issued pursuant to this section shall terminate six months from the date of issuance unless extended by the department.

(2) At least 30 days prior to the termination of a provisional license, the department shall give the facility a full and complete inspection. If, at the time of the inspection, it is determined that the facility meets all applicable requirements for licensure, a regular license shall be restored. If, at the time of the inspection, it is determined that the facility does not meet the requirements for licensure, but the facility has made substantial progress towards meeting the requirements, as determined by the department, the provisional license shall be renewed for six months. If, at the time of the first inspection, the department determines that there has not been substantial progress towards meeting the requirements for licensure, or, if at any subsequent inspection the department determines that there has not been substantial progress towards meeting

requirements identified at the most recent previous inspection, a regular license shall not be issued.

(e) The facility may request a hearing in writing within 10 days of the receipt of notice from the department denying a regular license under this section. The provisional license shall remain in effect during the pendency of the hearing. The hearing shall be held in accordance with Section 100171. The hearing officer shall uphold the denial of a regular license if the department proves, by a preponderance of the evidence, that the licensee did not meet the requirements for licensure.

SEC. 22. Section 1438 of the Health and Safety Code is amended to read:

1438. The state department shall review the effectiveness of the enforcement system in maintaining the quality of care provided by long-term health care facilities and shall submit a report thereon to the Legislature on enforcement activities, on or before December 1, 2001, and annually thereafter, together with any recommendations of the state department for additional legislation which it deems necessary to improve the effectiveness of the enforcement system or to enhance the quality of care provided by long-term health care facilities. This report shall be combined with the report required under Section 1423.5 into a single report. The time period for each report shall cover the previous state fiscal year.

SEC. 23. Section 14110.7 of the Welfare and Institutions Code is amended to read:

14110.7. (a) The director shall adopt regulations increasing the minimum number of equivalent nursing hours per patient required in skilled nursing facilities to 3.2, in skilled nursing facilities with special treatment programs to 2.3, in intermediate care facilities to 1.1, and in intermediate care facilities/developmentally disabled to 2.7.

(b) (1) The director shall adopt regulations that shall establish the minimum number of equivalent nursing hours per patient required in the following, for the first year of implementation of the first year of rates established pursuant to this article:

(A) 2.6 hours for skilled nursing facilities.

(B) 1.9 hours for skilled nursing facilities with special treatment programs.

(C) 0.9 hours for intermediate care facilities.

(D) 2.2 hours for intermediate care facilities/developmentally disabled.

(2) The staffing standards established by paragraph (1) shall become effective concurrently with the establishment of the first reimbursement rates under this article.

(3) The director shall adopt regulations that establish the minimum number of equivalent nursing hours per patient required in skilled

nursing facilities at 2.7 for the second year of implementation of rates established pursuant to this article.

(c) (1) The Legislature finds and declares all of the following:

(A) The one-year transition phase from 2.6 to 2.7 equivalent nursing hours allows ample time to restructure staffing.

(B) The 4 percent augmentation to reimburse for direct patient care, as defined in paragraph (2) of subdivision (b) of Section 14126.60, provides funds to cover additional expenses, if any, incurred by facilities to implement this staffing standard.

(2) Subject to the appropriation of sufficient funds, the department may adopt regulations to increase the minimum number of equivalent nursing hours required of facilities subject to this section per patient beyond 2.7 nursing hours per patient day.

(d) (1) The department shall identify those skilled nursing facilities that are in compliance with the 3.0 minimum double nursing hour standards, as defined in subdivision (a) of Section 1276.5 of the Health and Safety Code, but have actual staffing ratios below 2.5, as of July 1, 1990, and shall not enforce the 2.7 equivalent nursing hours with respect to those facilities until the third year of implementation of the rates established under this article.

(2) The department shall periodically review facilities that have actual staffing ratios described in paragraph (1) to ensure that they are making sufficient progress toward 2.7 hours.

(e) Notwithstanding paragraph (1) of subdivision (d), commencing January 1, 2000, the minimum number of nursing hours per patient day required in skilled nursing facilities shall be 3.2, without regard to the doubling of nursing hours as described in paragraph (1) of subdivision (b) of Section 1276.5 of the Health and Safety Code, and except as set forth in Section 1276.9 of the Health and Safety Code.

SEC. 23. 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.

CHAPTER 686

An act to amend Section 11155.5 of the Welfare and Institutions Code, relating to human services.

[Approved by Governor October 10, 2001. Filed with
Secretary of State October 10, 2001.]

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

SECTION 1. 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, may retain resources with a combined value of not more than ten thousand dollars ($10,000), consistent with Section 472(a) of the federal Social Security Act (42 U.S.C. Sec. 672(a)) as contained in the federal Foster Care Independence Act of 1999 (P.L. 106-169) and the child's transitional independent living plan. Any 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. 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.

CHAPTER 687

An act to amend Sections 101, 144, and 205 of, and to repeal Chapter 8.5 (commencing with Section 3901) of Division 2 of, the Business and Professions Code, to add Chapter 2.35 (commencing with Section 1416) to Division 2 of, and to repeal Section 1429.5 of, the Health and Safety Code, relating to nursing homes, and making an appropriation therefor.

[Approved by Governor October 10, 2001. Filed with
Secretary of State October 10, 2001.]

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

SECTION 1. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of:

(a) The Dental Board of California.
(b) The Medical Board of California.
(c) The State Board of Optometry.
(d) The California State Board of Pharmacy.
(e) The Veterinary Medical Board.
(f) The California Board of Accountancy.
(g) The California Architects Board.
(h) The Barbering and Cosmetology Program.
(i) The Board for Professional Engineers and Land Surveyors.
(j) The Contractors' State License Board.
(k) The Funeral Directors and Embalmers Program.
(*l*) The Structural Pest Control Board.
(m) The Bureau of Home Furnishings and Thermal Insulation.
(n) The Board of Registered Nursing.
(o) The Board of Behavioral Sciences.
(p) The State Athletic Commission.
(q) The Cemetery Program.
(r) The State Board of Guide Dogs for the Blind.
(s) The Bureau of Security and Investigative Services.
(t) The Court Reporters Board of California.
(u) The Board of Vocational Nursing and Psychiatric Technicians.
(v) The Landscape Architects Technical Committee.
(w) The Bureau of Electronic and Appliance Repair.
(x) The Division of Investigation.
(y) The Bureau of Automotive Repair.
(z) The State Board of Registration for Geologists and Geophysicists.
(aa) The Respiratory Care Board of California.
(ab) The Acupuncture Board.
(ac) The Board of Psychology.
(ad) The California Board of Podiatric Medicine.
(ae) The Physical Therapy Board of California.
(af) The Arbitration Review Program.
(ag) The Committee on Dental Auxiliaries.
(ah) The Hearing Aid Dispensers Advisory Commission.
(ai) The Physician Assistant Committee.
(aj) The Speech-Language Pathology and Audiology Board.
(ak) The Tax Preparers Program.
(a*l*) The California Board of Occupational Therapy.

(am) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 1.5. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of:

(a) The Dental Board of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Veterinary Medical Board.

(f) The California Board of Accountancy.

(g) The California Architects Board.

(h) The Bureau of Barbering and Cosmetology.

(i) The Board for Professional Engineers and Land Surveyors.

(j) The Contractors' State License Board.

(k) The Bureau for Private Postsecondary and Vocational Education.

(*l*) The Structural Pest Control Board.

(m) The Bureau of Home Furnishings and Thermal Insulation.

(n) The Board of Registered Nursing.

(o) The Board of Behavioral Sciences.

(p) The State Athletic Commission.

(q) The Cemetery and Funeral Bureau.

(r) The State Board of Guide Dogs for the Blind.

(s) The Bureau of Security and Investigative Services.

(t) The Court Reporters Board of California.

(u) The Board of Vocational Nursing and Psychiatric Technicians.

(v) The Landscape Architects Technical Committee.

(w) The Bureau of Electronic and Appliance Repair.

(x) The Division of Investigation.

(y) The Bureau of Automotive Repair.

(z) The State Board of Registration for Geologists and Geophysicists.

(aa) The Respiratory Care Board of California.

(ab) The Acupuncture Board.

(ac) The Board of Psychology.

(ad) The California Board of Podiatric Medicine.

(ae) The Physical Therapy Board of California.

(af) The Arbitration Review Program.

(ag) The Committee on Dental Auxiliaries.

(ah) The Hearing Aid Dispensers Bureau.

(ai) The Physician Assistant Committee.

(aj) The Speech-Language Pathology and Audiology Board.

(ak) The California Board of Occupational Therapy.

(a*l*) The Osteopathic Medical Board of California.

(am) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 2. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following boards or committees:

(1) California Board of Accountancy.

(2) State Athletic Commission.

(3) Board of Behavioral Sciences.

(4) Court Reporters Board of California.

(5) State Board of Guide Dogs for the Blind.

(6) California State Board of Pharmacy.

(7) Board of Registered Nursing.

(8) Veterinary Medical Board.

(9) Registered Veterinary Technician Committee.

(10) Board of Vocational Nursing and Psychiatric Technicians.

(11) Respiratory Care Board of California.

(12) Hearing Aid Dispensers Advisory Commission.

(13) Physical Therapy Board of California.

(14) Physician Assistant Committee of the Medical Board of California.

(15) Speech-Language Pathology and Audiology Board.

(16) Medical Board of California.

(17) State Board of Optometry.

(18) Acupuncture Board.

(19) Cemetery and Funeral Programs.

(20) Bureau of Security and Investigative Services.

(21) Division of Investigation.

(22) Board of Psychology.

(23) The California Board of Occupational Therapy.

SEC. 3. Section 205 of the Business and Professions Code is amended to read:

205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:

(1) Accountancy Fund.

(2) California Board of Architectural Examiners' Fund.

(3) Athletic Commission Fund.

(4) Barbering and Cosmetology Contingent Fund.

(5) Cemetery Fund.
(6) Contractors' License Fund.
(7) State Dentistry Fund.
(8) State Funeral Directors and Embalmers Fund.
(9) Guide Dogs for the Blind Fund.
(10) Bureau of Home Furnishings and Thermal Insulation Fund.
(11) California Board of Architectural Examiners-Landscape Architects Fund.
(12) Contingent Fund of the Medical Board of California.
(13) Optometry Fund.
(14) Pharmacy Board Contingent Fund.
(15) Physical Therapy Fund.
(16) Private Investigator Fund.
(17) Professional Engineers' and Land Surveyors' Fund.
(18) Consumer Affairs Fund.
(19) Behavioral Sciences Fund.
(20) Licensed Midwifery Fund.
(21) Court Reporters' Fund.
(22) Structural Pest Control Fund.
(23) Veterinary Medical Board Contingent Fund.
(24) Vocational Nurses Account of the Vocational Nursing and Psychiatric Technicians Fund.
(25) State Dental Auxiliary Fund.
(26) Electronic and Appliance Repair Fund.
(27) Geology and Geophysics Fund.
(28) Dispensing Opticians Fund.
(29) Acupuncture Fund.
(30) Hearing Aid Dispensers Fund.
(31) Physician Assistant Fund.
(32) Board of Podiatric Medicine Fund.
(33) Psychology Fund.
(34) Respiratory Care Fund.
(35) Speech-Language Pathology and Audiology Fund.
(36) Board of Registered Nursing Fund.
(37) Psychiatric Technician Examiners Account of the Vocational Nursing and Psychiatric Technicians Fund.
(38) Animal Health Technician Examining Committee Fund.
(39) Structural Pest Control Education and Enforcement Fund.
(40) Structural Pest Control Research Fund.

(b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account

or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

SEC. 4. Chapter 8.5 (commencing with Section 3901) of Division 2 of the Business and Professions Code is repealed.

SEC. 5. Chapter 2.35 (commencing with Section 1416) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 2.35. NURSING HOME ADMINISTRATOR PROGRAM

Article 1. General Provisions

1416. This chapter shall be known and may be cited as the Nursing Home Administrators' Act.

1416.1 There is hereby established in the State Department of Health Services a Nursing Home Administrator Program (NHAP), which shall license and regulate nursing home administrators.

1416.2. (a) The following definitions shall apply to this chapter:

(1) ''Department'' means the State Department of Health Services.

(2) ''NHAP'' or ''program'' means the Nursing Home Administrator Program.

(3) ''State'' means California, unless applied to the different parts of the United States. In this latter case, ''state'' includes the District of Columbia and the territories.

(4) ''Nursing home'' means any institution, facility, place, building, or agency, or portion thereof, licensed as a skilled nursing facility, intermediate care facility, or intermediate care facility/developmentally disabled, as defined in Chapter 2 (commencing with Section 1250). ''Nursing home'' also means an intermediate care facility/developmentally disabled habilitative, intermediate care facility/developmentally disabled-nursing, or congregate living health facility, as defined in Chapter 2 (commencing with Section 1250), if a licensed nursing home administrator is charged with the general administration of the facility.

(5) ''Nursing home administrator'' means an individual educated and trained within the field of nursing home administration who carries out the policies of the licensee of a nursing home and is licensed in accordance with this chapter. The nursing home administrator is charged with the general administration of a nursing home, regardless of whether he or she has an ownership interest and whether the administrator's function or duties are shared with one or more other individuals.

(6) ''Administrator-in-Training Program'' or ''AIT Program'' means a program that is approved by the NHAP in which qualified persons participate under the coordination, supervision, and teaching of a

preceptor, as described in Section 1416.57, who has obtained approval from the NHAP.

(b) Nothing in this section shall be construed to allow the program to have jurisdiction over an administrator of an intermediate care facility/developmentally disabled-nursing or an intermediate care facility/developmentally disabled habilitative, if the administrator of the facility is not using licensure under this chapter to qualify as an administrator in accordance with subdivision (d) of Section 1276.5.

(c) Nothing in this section shall be construed to define an intermediate care facility/developmentally disabled-nursing or an intermediate care facility/developmentally disabled habilitative as a nursing home for purposes other than the licensure of nursing home administrators under this chapter.

1416.4. The program shall adopt rules and regulations that are reasonably necessary to carry out this chapter. The rules and regulations shall be adopted, amended, and repealed in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. To the extent that the regulations governing the nursing home administrator program that are in effect prior to January 1, 2002, are not in conflict with this chapter, they shall remain in effect until new regulations are implemented for purposes of this chapter.

1416.6. (a) It shall be a misdemeanor for any person to act or serve in the capacity of a nursing home administrator, unless he or she is the holder of an active nursing home administrator's license issued in accordance with this chapter. Persons carrying out functions and duties delegated by a licensed nursing home administrator shall not be acting in violation of this chapter.

(b) (1) This chapter shall not apply to any person who serves as an acting administrator as provided in this subdivision when a licensed administrator is not available because of death, illness, or any other reason.

(2) A person who is acting as an administrator shall notify the program in writing within five days of acting in this capacity and provide factual information and specific circumstances necessitating the use of an acting administrator.

(3) No person shall act as an administrator for more than 10 days unless arrangements have been made for part-time supervision of his or her activities by a nursing home administrator who holds a license or provisional license under this chapter. Supervision shall include at least 8 hours per week of direct onsite supervision by the licensed administrator. The program shall be notified in writing of the nature of this arrangement. No person shall act as an administrator for more than two months without the written approval of the program. The program

shall not approve a person to act as an administrator for more than six months.

(4) If the acting administrator is an administrator in training, then the supervision required by paragraph (3) may be counted towards the total hours of supervised training required by subdivision (f) of Section 1416.57.

(c) Notwithstanding subdivision (b), an individual acting as an administrator for more than 10 days must have management experience in a health facility.

Article 2. Administration

1416.10. In conformity with the requirements of Section 1908(c) of the Social Security Act (42 U.S.C. Sec. 1396g(c)), the program shall have all of the following powers and duties:

(a) To develop, impose, and enforce standards that shall be met by individuals in order to receive a license as a nursing home administrator. At a minimum, the standards shall be designed to ensure that nursing home administrators shall be individuals who have not committed acts or crimes constituting grounds for denial of licensure and who are qualified by training or experience in the field of institutional administration to serve as nursing home administrators.

(b) To develop and apply procedures, including examinations and investigations, for determining whether an individual meets the standards.

(c) To issue licenses to individuals who have been determined to meet the standards, and to revoke or suspend licenses where grounds exist for those actions.

(d) To establish and carry out procedures designed to ensure that individuals licensed as nursing home administrators will, during any period that they serve as an administrator, comply with the required standards.

(e) To receive, investigate, and take appropriate action with respect to any charge or complaint filed with the program alleging that an individual licensed as a nursing home administrator has failed to comply with the required standards.

(f) To conduct studies of the administration of nursing homes within the state, with a view to the improvement of the standards imposed for the licensing of nursing home administrators, and of procedures and methods for the enforcement of standards with respect to administrators of nursing homes who have been licensed under this chapter.

(g) To receive and administer all funds and grants as are made available to the program in order to carry out the purposes of this chapter.

(h) To encourage qualified educational institutions and other qualified organizations to establish, provide, and conduct training and instruction programs and courses that will enable all otherwise qualified individuals to attain the qualifications necessary to meet the standards set by the program for licensed nursing home administrators, and to enable licensed nursing home administrators to meet the continuing education requirements for the renewal of their licenses.

(i) To consult with and seek the recommendations of the appropriate statewide professional societies, associations, institutional organizations, and educational institutions in the development of educational programs.

(j) To give due consideration to the recommendations of the National Advisory Council on Nursing Home Administration, in accordance with the provisions of subdivision (f) of Section 1908 of Title XIX of the Social Security Act (42 U.S.C. Sec. 1396g(f)).

1416.12. The following enforcement actions taken by the department against a facility and the name of the licensed administrator of the facility shall be reported to the program.

(a) Temporary suspension orders.

(b) Final decertification from the Medi-Cal or Medicare programs based on failure to meet certification requirements.

(c) Service of an accusation to revoke a facility's license.

(d) All class ''AA'' citations and three class ''A'' citations issued to a facility with the same administrator within a one-calendar year period. The department shall notify the program in the event that citations are overturned or modified in citation review conference, through binding arbitration, or on appeal.

Article 3. Licensing

1416.20. (a) The nursing home administrator licensing examination shall cover the broad aspects of nursing home administration.

(b) Unless otherwise provided in this article, every applicant for an initial license as a nursing home administrator shall pass a nursing home administrator licensing examination, which shall consist of a state and national examination. The state examination shall be held at least four times a year, at a time and place determined by the program. The national examination is computer-based and shall be scheduled by the applicant after the applicant is notified by the program of his or her eligibility to take the examination.

(c) If an applicant for licensure under this article, submits an endorsement certificate from another state indicating that he or she scored at least 75 percent on the national examination, the applicant shall

be required to take only the California state part of the licensing examination. If the applicant scored less than 75 percent on the national examination, he or she shall take both the state and national examination.

1416.22. (a) To qualify for the licensing examination, an applicant must be at least 18 years of age, be a citizen of the United States, be of reputable and responsible character, demonstrate an ability to comply with this chapter, and comply with at least one of the following requirements:

(1) Have a master's degree in nursing home administration or a related health administration field. The master's program in which the degree was obtained must have included an internship or residency of at least 480 hours in a skilled nursing facility or intermediate care facility.

(2) (A) With regard to applicants who have a current valid license as a nursing home administrator in another state and apply for licensure in this state, meet the minimum education requirements that existed in this state at the time the applicant was originally licensed in the other state.

(B) The minimum education requirements that have existed in California are as follows:

Prior to 7/1/73	None
From 7/1/73 to 6/30/74	30 semester units
From 7/1/74 to 6/30/75	45 semester units
From 7/1/75 to 6/30/80	60 semester units
From 7/1/80 to 1/1/02	Baccalaureate degree

(3) A doctorate degree in medicine and a current valid license as a physician and surgeon with 10 years of recent work experience, and the completion of a program-approved AIT Program of at least 1,000 hours.

(4) A baccalaureate degree, and the completion of a program-approved AIT Program of at least 1,000 hours.

(5) Ten years of recent full-time work experience, and a current license, as a licensed registered nurse, and the completion of a program-approved AIT Program of at least 1,000 hours. At least the most recent five years of the 10 years of work experience shall be in a supervisory or director of nursing position.

(6) Ten years of full-time work experience in any department of a skilled nursing facility, an intermediate care facility, or an intermediate care facility developmentally/disabled with at least 60 semester units (or 90 quarter units) of college or university courses, and the completion of a program-approved AIT Program of at least 1,000 hours. At least the most recent five years of the 10 years of work experience shall be in a position as a department manager.

(7) Ten years of full-time hospital administration experience in an acute care hospital with at least 60 semester units (or 90 quarter units)

of college or university courses, and the completion of a program-approved AIT Program of at least 1,000 hours. At least the most recent five years of the 10 years of work experience shall be in a supervisory position.

(8) If the applicant and the preceptor provide compelling evidence that previous work experience of the applicant directly relates to nursing home administrator duties, the program may accept a waiver exception to a portion of the AIT program that requires 1,000 hours.

(b) The applicant shall submit an official transcript that evidences the completion of required college and university courses, degrees, or both. An applicant who applies for the licensing examination on the basis of work experience shall submit a declaration signed under penalty of perjury, verifying his or her work experience. This declaration shall be signed by a licensed nursing home administrator, physician and surgeon, chief of staff, director of nurses, or registered nurse who can attest to the applicant's work experience.

1416.24. (a) An application for a nursing home administrator license shall be submitted to the program on a form provided by the program, with the appropriate nonrefundable fee for any required examination, the application, and licensure. The application shall contain information the program deems necessary to determine the applicant's qualifications and a statement whether the individual has been convicted of any crime other than a minor traffic violation. Each applicant shall meet the current requirements for any required examination and licensure. Applicants for licensure shall submit evidence of electronic transmission of fingerprints or fingerprint cards to the program.

(b) A completed application package, together with the examination application, and licensure fees must be received by the program at least 30 days prior to the examination date.

(c) (1) The withdrawal of an application for a license after it has been filed with the department shall not, unless the department consents in writing to the withdrawal, deprive the department of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon that ground.

(2) The suspension, expiration, or forfeiture by operation of law of a license issued by the department, the suspension, forfeiture, or cancellation by order of the department or a court of law of a license, or the surrender without the written consent of the department of a license, shall not deprive the department of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any grounds.

(d) An application that is submitted to the program is valid for only one year after the date of receipt. An applicant who fails to meet all requirements for licensure, including successfully passing the national and state examinations during that one-year period, shall be required to submit another application and appropriate application and examination fees to the program before attempting further examinations.

(e) The program may extend the one-year period described in subdivision (d) upon a showing of good cause. For purposes of this subdivision, good causes shall include, but shall not be limited to, delays in the processing of the application, or delays in applying for and taking the examination caused by illness, accident, or other extenuating circumstances.

(f) An applicant shall submit documentation and evidence to the program of his or her eligibility for licensure.

(g) At the time of the examination, the applicant shall read and sign the Examination Security Agreement and comply with its terms.

1416.26. (a) As part of the application process for a nursing home administrator license, an applicant shall submit to the department two sets of completed fingerprint cards for a criminal record clearance through the Department of Justice and the Federal Bureau of Investigation. As an alternative, the applicant may also provide proof of electronic transmission of fingerprints to the Department of Justice and the Federal Bureau of Investigation. Upon receipt of the fingerprints, the Department of Justice and the Federal Bureau of Investigation shall notify the department of the criminal record information. If no criminal record information has been recorded, the Department of Justice and the Federal Bureau of Investigation shall provide the department with a statement of that fact.

(b) This criminal record clearance shall be completed prior to issuing a license. Applicants shall be responsible for any costs associated with the criminal record clearance. The fee to cover the processing costs of the Department of Justice, not including the costs associated with rolling the fingerprint cards, shall not exceed thirty-two dollars ($32) per card for state fingerprints, and shall not exceed twenty-four dollars ($24) per card for federal fingerprints.

1416.28. (a) Notwithstanding any other law, the program shall at the time of application, issuance, or renewal of a nursing home administrator license require that the applicant or licensee provide his or her federal employer identification number or his or her social security number.

(b) Any applicant or licensee failing to provide his or her federal identification number or social security number shall be reported by the program to the Franchise Tax Board and, if failing to provide after notification pursuant to paragraph (1) of subdivision (b) of Section

19528 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), the program may not process any application, original license, or renewal of a license unless the applicant or licensee provides his or her federal employer identification number or social security number where requested on the application.

(d) The program shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

(1) Name.

(2) Address or addresses of record.

(3) Federal employer identification number or social security number.

(4) Type of license.

(5) Effective date of license or renewal.

(6) Expiration date of license.

(7) Whether license is active or inactive, if known.

(8) Whether license is new or a renewal.

(e) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(f) The program shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.

(g) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the social security number and federal employer identification number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(h) Any deputy, agent, clerk, officer, or employee of the program described in this chapter, any former officer or employee, or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this chapter, may not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or as provided in subdivision (j).

(i) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 17520 of the Family Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(j) If the program utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between California and the state requesting release of the social security number, any deputy, agent, clerk, officer, or employee of the program described in this chapter may release a social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

1416.30. (a) The program shall require compliance with any judgment or order for support prior to issuance or renewal of a license.

(b) Each applicant for the issuance or renewal of a nursing home administrator license, who is not in compliance with a judgment or order for support shall be subject to Section 11350.6 of the Welfare and Institutions Code.

(c) ''Compliance with a judgment or order of support'' has the same meaning as specified in paragraph (4) of subdivision (a) of Section 11350.6 of the Welfare and Institutions Code.

1416.32. (a) Prior to admission to the licensing examination, the applicant shall read and sign an examination security agreement and comply with its terms.

(b) The program may deny, suspend, revoke, or otherwise restrict the license of an applicant or a licensee for any of the following acts:

(1) Having or attempting to have an impersonator take the examination on one's behalf.

(2) Impersonating or attempting to impersonate another to take the examination on that person's behalf.

(3) Communicating or attempting to communicate about the examination content with another examinee or with any person other than the examination staff. This includes divulging the content of specific written examination items to examination preparation providers.

(4) Copying questions or making notes of examination materials or revealing the content of the examination to others who are preparing to take the NHAP examination or who are preparing others to take such examination.

(5) Obstructing or attempting to obstruct the administration of the examination in any way.

(c) It is a misdemeanor for any person to engage in any conduct that subverts or attempts to subvert any licensing examination or the administration of an examination, including, but not limited to, the following conduct:

(1) Conduct that violates the security of the examination materials, removing from the examination room any examination materials without authorization, the unauthorized reproduction by any means of any portion of the actual licensing examination, aiding by any means the

unauthorized reproduction of any portion of the actual licensing examination, paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination, obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination, using or purporting to use any examination questions or materials that were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination, or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(2) Communicating with any other candidate during the administration of a licensing examination, copying answers from another examinee or permitting one's answers to be copied by another examinee, having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination, or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

(d) Nothing in this section shall preclude prosecution under the authority provided for in any other provision of law.

(e) In addition to any other penalties, a person found guilty of violating this section, shall be liable for the actual damages sustained by the agency administering the examination not to exceed ten thousand dollars ($10,000) and the costs of litigation.

(f) The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(g) The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other provision of law.

1416.34. (a) (1) In order to have a passing score on either the national or state examination, an examinee shall earn a score of at least 75 percent.

(2) An applicant who fails to pass either the national or state examination shall retake the entire national or state examination.

(3) An applicant who fails to pass either the state or national examination after three attempts shall receive additional training as outlined by the program from a program-approved preceptor, prior to participating in another examination.

(b) The examination shall be administered and evaluated by either of the following:

(1) The department.

(2) A contractor or vendor pursuant to a written agreement with the program or department.

(c) The results of the examination shall be provided to each applicant in a timely manner, not to exceed 90 days from the date of the examination.

(d) The program shall issue a license to an applicant who successfully passes the required examination and has satisfied all other requirements for licensure.

(e) A license shall be effective for a period of two years from the date of issuance.

(f) The program shall issue a provisional license to candidates who meet the provisional licensure requirements established by this chapter.

(g) The program shall replace a lost, damaged, or destroyed license certificate upon receipt of a written request from a licensee and payment of the duplicate license fee. A licensee shall complete a request for a duplicate license on the required program form, and then submit it to the program.

(h) A licensee shall inform the program of the licensee's current home address, mailing address, and if employed by a nursing facility, the name and address of that employer. A licensee shall report a change in any of this information to the program within 30 calendar days. Failure of the licensee to provide timely notice to the program may result in a citation penalty. A licensee shall provide to the program an address to be included in the public files.

(i) A licensee shall display his or her license and show to anyone upon request in order to inform patients or the public as to the identity of the regulatory agency that they may contact if they have questions or complaints regarding the licensee.

1416.36. (a) The fees prescribed by this chapter are as follows:

(1) The application fee for reviewing an applicant's eligibility to take the examination shall be twenty-five dollars ($25).

(2) The application fee for persons applying for reciprocity consideration licensure under Section 1416.40 shall be fifty dollars ($50).

(3) The application fee for persons applying for the AIT Program shall be one hundred dollars ($100).

(4) The examination fees shall be:

(A) Two hundred seventy-five dollars ($275) for an automated national examination.

(B) Two hundred ten dollars ($210) for an automated state examination or one hundred forty dollars ($140) for a written state examination.

(5) The fee for an initial license shall be one hundred ninety dollars ($190).

(6) The renewal fee for an active or inactive license shall be one hundred ninety dollars ($190).

(7) The delinquency fee shall be fifty dollars ($50).

(8) The duplicate license fee shall be twenty-five dollars ($25).

(9) The fee for a provisional license shall be two hundred fifty dollars ($250).

(10) The fee for endorsement of credentials to the licensing authority of another state shall be twenty-five dollars ($25).

(11) The preceptor certification fee shall be fifty dollars ($50) for each three-year period.

(12) The biennial fee for approval of a continuing education provider shall be one hundred fifty dollars ($150).

(13) The biennial fee for approval of a continuing education course shall be not more than fifteen dollars ($15).

(b) Commencing July 1, 2002, fees provided in this section shall be adjusted annually, as directed by the Legislature in the annual Budget Act. The proposed adjustment in the examination fees shall not exceed the increase in the California Consumer Price Index, except as provided in subdivision (d). The department shall provide an annual fiscal year program fee report to the Legislature each April 1, commencing on April 1, 2002.

(c) The department shall, by July 30 of each year, publish a list of actual numerical fee charges as adjusted pursuant to this section. This adjustment of fees and the publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) If the revenue projected to be collected is less than the projected costs for the budget year, the department may propose that fees be adjusted by not more than twice the increase in the Consumer Price Index.

1416.38. (a) The Nursing Home Administrator's State License Examining Board Fund in the Professions and Vocations Fund in the State Treasury is hereby renamed the Nursing Home Administrator's State License Examining Fund and continued in existence in the State Treasury.

(b) Within 10 days after the beginning of every month, all fees collected by the program for the month preceding, under this chapter, shall be paid into the Nursing Home Administrator's State License Examining Fund.

(c) The funding paid into the Nursing Home Administrator's State License Examining Fund shall be continuously appropriated to the program for expenditures in the manner prescribed by law to defray the expenses of the program and in carrying out and enforcing the provisions of this chapter.

1416.40. (a) For purposes of this chapter, ''reciprocity applicant'' means any applicant who holds a current license as a nursing home administrator in another state has been licensed and in good standing, has passed the national examination, and the applicant is otherwise qualified.

(b) An applicant who holds a current valid license as a nursing home administrator in another state may be issued a one-year provisional license as a reciprocity applicant pursuant to this section. The provisional license authorizes the holder to work in this state at a licensed nursing facility during the one-year licensure period.

(c) The applicant shall obtain an application form from the program, complete the form accurately, and, under penalty of perjury, certify the experience, education, and criminal record history information supplied in the application. The applicant shall submit the application to the program, along with any supporting documents to substantiate the application and the applicable provisional, examination, and licensure fees.

(d) The provisional license may be granted to a reciprocity applicant who complies with all of the following informational requirements:

(1) Provides a statement of health consistent with an ability to perform the duties of a nursing home administrator.

(2) Discloses the fact of and the circumstances surrounding any of the following:

(A) Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations. The applicant shall submit appropriate criminal record information for purposes of this subparagraph.

(B) Any discipline affecting nursing home administrator licensure in any state.

(C) Any pending investigations or disciplinary actions concerning, or surrender of, nursing home administrator licensure in any state. The applicant shall submit an endorsement certificate to verify state licensure and substantiate if he or she has no pending investigation, disciplinary action, or surrender under this subparagraph.

(3) Submits official transcripts as evidence of completed college or university courses and degrees.

(4) Provides satisfactory evidence of current or recent employment experience within the last five years as a licensed nursing home administrator.

(5) Submits proof that the applicant is at least 18 years of age.

(e) The reciprocity applicant who holds a provisional license as authorized by this section shall be required to pass the state examination. If the provisional licensee, fails to pass the state examination within the one-year provisional licensure period, the provisional license shall

expire and no further reciprocity accommodations shall be allowed. The provisional license may not be renewed or extended. At the expiration of the provisional license the applicant may seek licensure in this state through standard procedures.

1416.42. (a) Except for provisional licenses issued pursuant to Section 1416.40, each license issued pursuant to this chapter shall expire 24 months from the date of issuance.

(b) To renew an unexpired license the licensee shall, at least 30 days prior to the expiration of the license, submit an application for renewal on a form provided by the program, accompanied by the renewal fee. An applicant may request either an active license or an inactive license. If an applicant requests an active license, he or she shall submit proof of completion of the required hours of program-approved continuing education.

(c) A delinquency fee is payable for license renewals not received by the program one day after the license expires.

(d) A license which has expired may be reinstated within three years following the date of expiration. The licensee shall apply for reinstatement on a form provided by the program and submit the completed form together with the current fee for license renewal. If the licensee requests an active license, he or she shall furnish proof of completion of the required hours of continuing education. The reinstatement shall be effective on the date that the completed application, including required fees, is submitted and approved.

1416.44. (a) Notwithstanding any other provision of law, a licensee who permitted his or her license to expire while serving in any branch of the armed services of the United States during a period of war, as defined in subdivision (e), may, upon application, reinstate his or her license without examination or penalty if the following conditions are met:

(1) His or her license was valid at the time he or she entered the armed services.

(2) The application for reinstatement is made while serving in the armed services, not later than one year from the date of discharge from active service or return to inactive military status, or within three years following the license date of expiration whichever is the most recent time period.

(3) The application for reinstatement is accompanied by an affidavit showing the date of entrance into the service, whether still in the service or date of discharge, and the renewal fee for the current renewal period in which the application is filed is paid.

(4) The application for reinstatement indicates no criminal convictions while absent from the profession.

(b) If application for reinstatement is filed more than one year after discharge or return to inactive status, the applicant, in the discretion of the licensing program, may be required to pass an examination and pay additional fees.

(c) Unless otherwise specifically provided by law, any licensee who, either part time or full time, practices in this state the nursing home administrator profession shall be required to maintain his or her license in good standing even though he or she is in military service.

(d) For the purposes in this section, time spent by a licensee in receiving treatment or hospitalization in any veterans' facility during which he or she is prevented from practicing his or her profession or vocation shall be excluded in determining the periods specified in paragraph (2) of subdivision (a).

(e) As used in this section, ''war'' means any of the following circumstances:

(1) Whenever Congress has declared war and peace has not formally been restored.

(2) Whenever the United States is engaged in active military operations against any foreign power, whether or not war has been formally declared.

(3) Whenever the United States is assisting the United Nations, in actions involving the use of armed force, to restore international peace and security.

1416.45. A licensee may not engage in licensed activity while his or her license is suspended or revoked, or after it has expired.

1416.46. (a) A revoked license may not be renewed.

(b) A licensee whose license has been revoked may petition the program for reinstatement after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The petitioner shall be afforded an opportunity to present either oral or written argument before the program. The program shall decide the petition and the decision shall include the reasons therefor, and any terms and conditions that the program reasonably deems appropriate to impose as a condition of reinstatement.

1416.48. A licensee who does not intend to engage in activity requiring nursing home administrator licensure may file a request to place his or her license in inactive status. An inactive license is subject to all requirements for renewal, including payment of fees, but completion of continuing education is not required to renew an inactive license. However, proof of completion of 40 continuing education credits during the last two years shall be submitted together with an application for reinstatement of an active license.

1416.50. (a) For purposes of this chapter, ''continuing education'' means any course of study offered by an educational institution, association, professional society, or organization for the purpose of providing continuing education for nursing home administrators.

(b) This section shall govern the continuing education requirements needed by a nursing home administrator to renew his or her nursing home administrator license.

(c) In order to renew a license, the applicant shall provide evidence satisfactory to the program that he or she has completed 40 hours of program-approved continuing education courses, of which at least 10 total hours shall be specifically in the area of aging or patient care.

(d) The continuing education courses to be approved for credit toward the continuing education requirements may include the following subject areas offered by accredited colleges, universities, community colleges, or a training entity approved by the department.

(1) Resident care.
(2) Personnel management.
(3) Financial management.
(4) Environmental management.
(5) Regulatory management.
(6) Organizational management.
(7) Patient care and aging.

(e) No continuing education credit shall be allowed for courses failed according to the institution's grading determination.

(f) If the program finds that programs of training and instruction conducted within the state are not sufficient in number or content to enable nursing home administrators to meet requirements established by law and this chapter, the program may approve courses conducted within and without this state as sufficient to meet educational requirements established by law and this chapter. For the purposes of this subdivision, the program shall have the authority to receive funds in a manner consistent with the requirements of the federal government.

Article 4. Training

1416.55. (a) An Administrator-in-Training Program (AIT Program) shall be developed by the NHAP, in consultation with representatives from the long-term care industry and advocacy groups. The AIT Program shall include, but not be limited to, all of the following areas of instruction:

(1) Orientation.
(2) Administration and business office.
(3) State and federal regulations governing long-term care facilities.
(4) Residents' rights and abuse prevention.

(5) Staffing requirements and workforce retention.
(6) Nursing services.
(7) Resident activities.
(8) Resident care.
(9) Social services.
(10) Dietary management.
(11) Environmental care, including housekeeping, laundry, and maintenance.
(12) Financial management.
(13) General management.
(14) Government regulations.
(15) Legal management.
(16) Personnel management and training.
(17) Consultants and contracts.
(18) Medical records.
(19) Public relations and marketing.

(b) A person who seeks to satisfy requirements for admission to licensure examinations through participation in an AIT Program shall first receive approval to begin the AIT Program. An applicant shall successfully complete the AIT Program in a program-approved facility under the coordination, supervision, and teaching of a preceptor who has obtained certification from the program and continues to meet the qualifications set forth in the rules and regulations of the program.

(c) In order to be eligible for the AIT Program, an applicant shall submit an application package on forms provided by the NHAP, and pay the applicable fees established by this chapter. The applicant shall be at least 18 years of age.

(d) In addition to the requirements in subdivision (c), the applicant shall meet one or a combination of the following requirements to be eligible for the AIT Program:

(1) A doctorate degree in medicine and a current valid license as a physician and surgeon with at least 10 years of recent work experience.
(2) A baccalaureate degree.
(3) Ten years of full-time work experience and a current valid license as a registered nurse. At least the most recent five years of the 10 years of work experience shall be in a supervisory or director of nursing position.
(4) Ten years of full-time work experience in any department of a skilled nursing facility, an intermediate care facility, or an intermediate care facility/developmentally disabled with at least 60 semester units (or 90 quarter units) of college or university courses. At least the most recent five years of the 10 years of work experience shall be in a position as a department manager.

(5) Ten years of full-time hospital administration experience in an acute care hospital with at least 60 semester units (or 90 quarter units) of college or university courses. At least the most recent five years of the 10 years of work experience shall be in a supervisory position.

(e) The applicant shall submit an official transcript that evidences the completion of required college or university courses, degrees, or both. An applicant who qualifies for the AIT Program on the basis of work experience shall submit a declaration signed under penalty of perjury verifying his or her work experience. This declaration shall be signed by a licensed nursing home administrator, physician and surgeon, chief of staff, director of nurses, or registered nurse who can attest to the applicant's work experience.

1416.57. (a) An individual may, upon compliance with the requirements of this section, be approved by the program to be a preceptor who is authorized to provide a training program in which the preceptor coordinates, supervises, and teaches persons seeking to meet specified requirements to qualify for the licensing examination under this chapter. The approval obtained under this section shall be effective for a period of two years, after which the preceptor is required to renew his or her preceptor status and attend a preceptor training course provided by the program.

(b) In order to qualify to be a preceptor, a person shall meet all of the following conditions:

(1) Be a current active California licensed nursing home administrator.

(2) Have no pending disciplinary actions.

(3) Have served for at least two years as the designated administrator of a California licensed nursing home or for at least four years as the designated assistant administrator of a California licensed nursing home.

(4) Have gained experience in all administrative functions of a nursing home.

(c) The applicant seeking approval to be a preceptor shall submit an application form provided by the program that requires the applicant's name, address, birth date, the states and dates of issuance of all professional licenses, including those as a nursing home administrator, and any other information required by the program.

(d) At the time of application, for purposes of substantiating that the conditions specified in subdivision (b) have been met, the applicant shall provide satisfactory evidence of his or her education, experience, and knowledge that qualifies him or her to supervise the training of an AIT Program participant and verification that the facilities at which the applicant has had direct management control as an administrator had a

continuous operating history, free from major deficiencies, during the period of the applicant's administration.

(e) An applicant shall not be approved as a preceptor until the applicant attends a preceptor's training seminar provided or approved by the program.

(f) (1) For purposes of this section, ''AIT'' means Administrator-in-Training.

(2) The following requirements shall apply to a preceptor approved pursuant to this section:

(A) The preceptor shall provide a directly supervised training program that will include a minimum of 20 hours per week and a maximum of 60 hours per week and be available at least by telephone at all other times. There shall be regular personal contact between the preceptor and the AIT during the training program. For purposes of this subparagraph, ''a directly supervised training program'' means supervision by a preceptor of an AIT during the performance of duties authorized by this section. The preceptor shall be available during the AIT's performance of those duties.

(B) The preceptor shall be the designated administrator of the facility where the training is conducted.

(C) The preceptor may not supervise more than two AIT trainees during the same time period.

(D) The preceptor shall inform the NHAP of any significant training program changes dealing with his or her specific AIT.

(E) The preceptor shall rate the AIT's training performance and complete an AIT evaluation report at the end of the AIT's training.

(F) The preceptor shall be evaluated by the program based on the examination success and failure history of his or her AIT trainees and the program may revoke or suspend preceptor certificates as appropriate.

Article 5. Enforcement

1416.60. Each licensee shall, within 30 days, after each appointment as the designated administrator of a nursing home and after any termination of that appointment, notify the program. Each notification shall include the name of the administrator, the nursing home administrator number assigned, the name and address of the facility or facilities involved, and the date of the appointment or termination. All information provided pursuant to this section shall be public information.

1416.62. The program shall maintain a current list of nursing home administrators who have been placed on probation or had their licenses suspended or revoked within the last three years. The program shall provide the current list of these administrators to licensed nursing homes

and the department district offices every six months. The current list shall also be available to the general public upon request.

1416.64. (a) The program shall maintain a record of enforcement actions reported to the program, pursuant to Section 1416.12. The program shall routinely review the citation logs and files of nursing home administrators whose facilities have received citations from the department to determine if remedial or disciplinary action against the administrator is warranted based on the administrator's involvement or culpability in the citations. Regardless of the facility's performance record, the program may initiate disciplinary action against an administrator who violates any statute or regulation governing licensed nursing home administrators.

(b) Following receipt of reports on temporary suspension orders, service of an accusation for facility license revocations, or final decertification of a facility from participation in the Medi-Cal or Medicare programs, due to failure to meet certification standards, the program shall make a determination as to whether the evidence available warrants remedial or disciplinary action against the administrator or constitutes grounds for denial, suspension, or revocation pursuant to Section 1416.76.

(c) If the program determines that action against the administrator is not warranted, the program shall document in the file the reasons and specific circumstances for not taking remedial or disciplinary action against the administrator's license.

(d) The program shall consider all of the following prior to making a determination to initiate disciplinary action:

(1) Any information provided to the program by the administrator pursuant to this section.

(2) Whether the administrator was in fact the designated administrator of the facility when the violation occurred, or the designated administrator of the facility during the period of time the citation covered.

(3) Whether the administrator should have or could have prevented the violation or violations that occurred.

(e) Prior to making a final determination to initiate action against an administrator, the program shall notify the administrator that the program is considering action and provide the administrator with an opportunity to show just cause why remedial or disciplinary action should not be initiated.

(f) If the program determines that grounds for remedial or disciplinary action exist, the program may initiate either or both of the following actions, as warranted:

(1) Remedial action, including, but not limited to, a conference with the administrator, a letter of warning, or both.

(2) Disciplinary action, including, but not limited to, citations, fines, formal letters of reprimand, probation, denial, suspension, revocation of the administrator's license, or any combination of these actions.

1416.66. (a) The program shall develop and make available a form that may be utilized at the nursing home administrator's option to provide the program with relevant information, documentation, and background on any actions reported to the program pursuant Section 1416.12.

(b) Any reports received pursuant to Section 1416.12 shall remain in the administrator's file for five years, unless the program is notified that the action has been modified or overturned. Any modification of an action shall be noted and documented in the administrator's file.

1416.68. (a) It is the responsibility of the nursing home administrator as the managing officer of the facility to plan, organize, direct, and control the day-to-day functions of a facility and to maintain the facility's compliance with applicable laws, rules, and regulations.

(b) The administrator shall be vested with adequate authority to comply with the laws, rules, and regulations relating to the management of the facility.

(c) No licensee shall be cited for any violation caused by any person licensed pursuant to the Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code) if the person is independent of, and not connected with, the facility and the licensee shows that he or she has exercised reasonable care and diligence in notifying these persons of their duties to the patients in the nursing facility.

(d) The delegation of any authority by a licensee shall not diminish the responsibilities of that licensee.

1416.69. (a) Within 24 hours after the nursing home administrator acquires actual knowledge or credible information that any of the events specified in subdivision (b) has occurred, the nursing home administrator shall notify the department's district office for licensing and certification of that knowledge or information. This notification may be in written form if it is provided by telephone facsimile or overnight mail, or by telephone with a written confirmation within five calendar days. The information provided pursuant to this subdivision may not be released to the public by the department unless its release is needed to justify an action taken by the department or it otherwise becomes a matter of public record. A violation of this section may result in a citation.

(b) All of the following occurrences shall require notification pursuant to this section as long as the administrator has actual knowledge of the occurrence:

(1) The licensee of a facility receives notice that a judgment lien has been levied against the facility or any of the assets of the facility or the licensee.

(2) A financial institution refuses to honor a check or other instrument issued by the licensee to its employees for a regular payroll.

(3) The supplies, including food items and other perishables, on hand in the facility fall below the minimum specified by any applicable statute or regulation.

(4) The financial resources of the licensee fall below the amount needed to operate the facility for a period of at least 45 days based on the current occupancy of the facility.

(5) The licensee fails to make timely payment of any premiums required to maintain required insurance policies or bonds in effect, or any tax lien levied by any government agency.

1416.70. (a) The program shall establish a system for the issuance of citations to licensees, examinees, or participants of any program activity offered or approved by the program. The citations may contain an order of abatement, an order to pay an administrative fine assessed by the program chief, or both, where the licensee, examinee, or participant is in violation of any state or federal statute or regulation governing licensed nursing home administrators.

(b) The system shall contain all of the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Where appropriate, the citation shall contain an order of abatement fixing reasonable time for abatement of the violation.

(3) (A) Administrative fines assessed by the program shall be separate from and shall not preclude the levying of any other fines or any civil or criminal penalty.

(B) In no event shall the administrative fine assessed by the program be less than fifty dollars ($50) or exceed two thousand five hundred dollars ($2,500) for each violation. The total assessment shall not exceed ten thousand dollars ($10,000) for each investigation or for counts involving fraudulent billings submitted to insurance companies, Medi-Cal, or Medicare programs.

(4) In assessing a fine, the program shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith effort of the licensee, examinee, or participant, the unprofessional conduct, including, but not limited to, incompetence and negligence in the performance of the duties and responsibilities of an administrator, the extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation, whether the violation was related to

patient care, the history of any previous violations, and other matters as may be appropriate.

(5) A citation or fine assessment issued pursuant to a citation shall inform the licensee, examinee, or participant, that if he or she desires a hearing to contest the finding of a violation, the hearing shall be requested by written notice to the program within 30 days after the date of issuance of the citation or assessment. A licensee may, in lieu of contesting a citation pursuant to this section, transmit to the state department 75 percent of the amount specified in the citation for each violation within 15 business days after the issuance of the citation.

(6) Failure of a licensee, examinee, or participant to pay a fine within 30 days of the date of the assessment, unless the citation is being appealed, may result in further disciplinary action being taken by the program. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine, along with any accrued penalty interest, shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee, fine, and accrued interest penalty. A citation may be issued without the assessment of an administrative fine.

(c) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act. Notwithstanding any other provisions of law, where a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosures. Administrative fines collected pursuant to this section shall be deposited in the Nursing Home Administrator's State License Examining Fund.

1416.72. (a) The program may issue a citation to any person who holds a license from the program and who violates any statute or regulation governing licensed nursing home administrators.

(b) Any licensee served with a citation may contest the citation by appeal to the program within 30 days of service of the citation. Appeals shall be conducted pursuant to Section 100171.

(c) In addition to requesting a hearing before an administrative law judge, the licensee may, within 10 days after service of the citation, notify the department in writing of his or her request for an informal conference with the department regarding the violations cited in the citation. At the time of requesting an informal conference, the licensee shall inform the department whether he or she shall be represented at the informal conference by legal counsel. Failure to notify the department of legal representation shall not result in forfeiture of the right to have legal counsel present. Unless the request for an informal hearing is made within the 10-day period, the licensee's right to an informal hearing is deemed waived.

(d) The department shall hold an informal conference with the licensee and, if applicable, his or her legal counsel or authorized representatives. At the conclusion of the informal conference the department may affirm, modify, or dismiss the citation, including any administrative fine levied, or order of abatement issued.

(e) The licensee does not waive his or her request for a hearing to contest a citation by requesting an informal conference. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any administrative fine levied or order of abatement, is modified or affirmed, the citation shall be upheld and the licensee shall, within 15 working days from the date the citation review conference decision was rendered, notify the director or the director's designee that he or she wishes to appeal the decision through the procedures set forth in Section 100171.

1416.74. (a) The time allowed for abatement of violation shall begin the first day after the order of abatement has been served or received. If a licensee who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the licensee may request from the program an extension of time in which to complete the correction. The request shall be in writing and made within the time set for abatement.

(b) An order of abatement shall either be personally served upon the licensee or mailed by certified mail, return receipt requested.

(c) When an order of abatement is not contested, or if the order is appealed and the licensee does not prevail, failure to abate the violation cited within the time specified in the citation shall constitute a violation and failure to comply with the order of abatement. Where a licensee has failed to correct a violation within the time specified in the citation the department shall assess the licensee a civil penalty in the amount of fifty dollars ($50) for each day that the violation continues beyond the date specified in the citation. If the licensee disputes a determination by the department regarding alleged failure to correct a violation or regarding the reasonableness of the proposed deadline for correction, the licensee may request an informal conference to contest the determination.

(d) Any unpaid administrative fine shall begin accruing a 7-percent interest penalty on the unpaid balance due. This interest shall continue to accrue until the administrative fine and interest are paid in full.

1416.75. The program may deny, or may suspend or revoke, a license upon any of the following grounds:

(a) Gross negligence.

(b) Incompetence.

(c) The conviction of any crime involving dishonesty or which is substantially related to the qualifications, functions, or duties of a nursing home administrator. A conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(d) Using fraud or deception in applying for a license or in taking the examination provided for in this chapter.

(e) Treating or attempting to treat any physical or mental condition without being currently licensed to do so.

(f) Violating Section 650 of the Business and Professions Code, any provision of this chapter, or any rule or regulation of the program adopted pursuant to this chapter.

(g) Lack of any qualification requirement for the license.

(h) Failure to report under Section 1416.60 to the program, without just cause.

1416.76. (a) The program may deny a nursing home administrator applicant or licensee, a license, based on one of the following grounds:

(1) Conviction of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. The program may take action following the establishment of a conviction after the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(2) Commits any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) Commits any act which, if done by a licentiate, would be grounds for suspension or revocation of license. The program may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of a nursing home administrator.

(b) Notwithstanding any other provision of this chapter, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Section 4852.01 of the Penal Code, or that he or she has been convicted of a misdemeanor and has met all applicable requirements of the criteria of rehabilitation developed by the program pursuant to subdivision (f).

(c) The program may deny a nursing home administrator license on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

(d) The program may suspend or revoke a license on the ground that the applicant or licensee has been convicted of a crime, as defined in paragraph (1) of subdivision (a), if the crime is substantially related to the qualifications, functions, or duties of a nursing home administrator.

(e) The program shall develop criteria to use to determine whether a crime or act is substantially related to the qualifications, functions, or duties of a nursing home administrator, and shall use the criteria when considering the denial, suspension, or revocation of a license.

(f) The program shall develop criteria to be used by the program to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license under this section.

(g) The program shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee pursuant to the evaluation process set forth in subdivision (f).

1416.77. The program may deny, or may suspend or revoke, a nursing home administrator license or participation in specific training program areas under this chapter upon any of the following grounds:

(a) Misappropriation of funds or property of the facility, the patients, or of others.

(b) Using fraud, deception, or misrepresentation in applying for the AIT Program, the examination for licensure, or any other program functions provided for in this chapter.

(c) Procuring a nursing home license by fraud, deception, or misrepresentation.

(d) Impersonating any applicant or acting as a proxy for an applicant in an examination.

(e) Impersonating any licensed nursing home administrator.

(f) Treating or attempting to treat any physical or mental condition without having a valid license to do so.

(g) Violating Section 650 of the Business and Professions Code, any provisions of this chapter, or any rule or regulation of the program adopted pursuant to this chapter.

(h) Lack of any qualification requirement for a license, participation in the AIT Program or preceptor program.

(i) A pattern of failure to report changes under Section 1416.60 to the program without just cause.

(j) Failure to comply with this chapter or the laws, rules, and regulations relating to health facilities.

(k) The commission of any dishonest, corrupt, or fraudulent act or any act of physical or mental, including sexual, abuse of any person in connection with the administration of, or any patient in, a nursing home.

(*l*) Violation by the licensee of any of the provisions of this chapter or of the rules and regulations promulgated under this chapter.

(m) Aiding, abetting, or conspiring with another person to violate provisions of this chapter or of the rules and regulations promulgated under this chapter.

(n) Violation of the examination security agreement.

1416.78. (a) The program may place a nursing home administrator license on probation in lieu of formal action to suspend or revoke the license if the department determines that probation is the appropriate action. Upon successful completion of the probation period, the license shall be restored to regular status.

(b) The probationary license shall be based upon an agreement entered into between the licensee and the program that specifies terms and conditions of licensure during the probationary period. The terms and conditions shall be related to matters, including, but not limited to, work performance, rehabilitation, training, counseling, progress reports, and treatment programs.

(c) The term of the probationary license shall not exceed two years. If the licensee successfully completes the term of probation, as determined by the department, no further action shall be taken upon the allegations that were the basis for the probationary license. If the licensee fails to comply with the terms and conditions of the probationary license agreement, the department may proceed with a formal action to suspend or revoke the license.

1416.80. Upon the determination to deny application for licensure for grounds specified in Section 1416.77, the program shall immediately notify the applicant in writing by certified mail. A petition for an administrative hearing must be received by the program within 20 business days of receipt of notification. Upon receipt, the department shall set the matter for administrative hearing, pursuant to procedures specified in Section 100171.

1416.82. (a) Proceedings to suspend or revoke licensure for grounds specified in Section 1416.77 shall be conducted in accordance with Section 100171. In the event of conflict between this chapter and Section 100171, Section 100171 shall prevail.

(b) (1) The program may temporarily suspend any license prior to any hearing if the action is necessary to protect the public welfare. The program shall notify the licensee of the temporary suspension and the effective date. Upon receipt of a notice of defense by the licensee, the department shall set the matter within 15 days. The administrative hearing conducted in accordance with Section 100171 shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the hearing is completed and the department has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the department fails to make a final determination on the merits of the

action within 60 days after the original hearing has been completed. If the provisions of this chapter or the rules or regulations promulgated by the director are violated by a licensee, the director may suspend the license for the violation.

(2) If the program determines that the temporary suspension shall become an actual suspension, the department shall specify the period of the suspension, not to exceed two years. The program may determine that the suspension shall be stayed, and place the licensee on probation for a period that shall not exceed two years.

(c) The program may suspend or revoke a license prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Proceedings for immediate revocation shall be conducted in accordance with Section 100171. The department shall set the matter for hearing within 15 days and hold the administrative hearing as soon as possible but not later than 30 calendar days from receipt of the request for a hearing. A written hearing decision upholding or setting aside the action shall be sent by certified mail to the licenseholder within 30 calendar days of the hearing.

1416.84. Whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, a violation of this chapter, the superior court in and for the county in which those acts or practices take place, or are about to take place, may issue an injunction or other appropriate order, restraining the conduct, on application of the program, to the Attorney General, or the district attorney.

1416.86. If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

SEC. 6. Section 1429.5 of the Health and Safety Code is repealed.

SEC. 7. Section 1.5 of this bill incorporates amendments to Section 101 of the Business and Professions Code proposed by this bill and SB 26. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 101 of the Business and Professions Code, and (3) this bill is enacted after SB 26, in which case Section 101 of the Business and Professions Code, as amended by SB 26, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 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.

CHAPTER 688

An act to amend Sections 8801.3 and 8814.5 of the Family Code, relating to adoption.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 8801.3 of the Family Code is amended to read:

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

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

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

(1) Each birth parent shall have been advised of his or her rights pursuant to Section 8801.5 at least 10 days before signing the agreement, unless the adoption service provider finds exigent circumstances that shall be set forth in the adoption placement agreement.

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

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

(4) The adoption service provider who witnesses the signatures shall keep the original of the adoption placement agreement and immediately forward it and supporting documentation as required by the department to the department or delegated county adoption agency.

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

(6) If the birth parent is not located in this state or country, the adoption placement agreement shall be signed before an adoption service provider or, for purposes of identification of the birth parent only, before a notary or other person authorized to perform notarial acts in the state or country in which the birth parent is located. This paragraph is not applicable to intercountry adoptions, as defined in Section 8527, which shall be governed by Chapter 4 (commencing with Section 8900).

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

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

(2) A statement that the birth parent understands that the placement is for the purpose of adoption and that if the birth parent takes no further action, on the 31st day after signing the adoption placement agreement, the agreement shall become a permanent and irrevocable consent to the adoption.

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

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

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

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

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

SEC. 2. Section 8814.5 of the Family Code is amended to read:

8814.5. (a) After a consent to the adoption is signed by the birth parent or parents pursuant to Section 8801.3 or 8814, the birth parent or parents signing the consent shall have 30 days to take one of the following actions:

(1) Sign and deliver to the department or delegated county adoption agency a written statement revoking the consent and requesting the child to be returned to the birth parent or parents. After revoking consent, in cases where the birth parent or parents have not regained custody, or the birth parent or parents have failed to make efforts to exercise their rights under subdivision (b) of Section 8815, a written notarized statement reinstating the original consent may be signed and delivered to the department or delegated county adoption agency, in which case the revocation of consent shall be void and a new 30-day period shall

commence. After revoking consent, in cases in which the birth parent or parents have regained custody, upon the delivery of a written notarized statement reinstating the original consent to the department or delegated county adoption agency, the revocation of consent shall be void and a new 30-day period shall commence. The birth mother shall be informed of the operational timelines associated with this section at the time of signing of the statement reinstating the original consent.

(2) Sign a waiver of the right to revoke consent on a form prescribed by the department in the presence of a representative of the department or delegated county adoption agency. If neither a representative of the department nor a representative of a delegated county adoption agency is reasonably available, the waiver of the right to revoke consent may be signed in the presence of a judicial officer of a court of record if the birth parent is represented by independent legal counsel. ''Reasonably available'' means that a representative from either the department or the delegated county adoption agency is available to accept the signing of the waiver within 10 days and is within 100 miles of the location of the birth mother.

An adoption service provider may assist the birth parent or parents in any activity where the primary purpose of that activity is to facilitate the signing of the waiver with the department, a delegated county agency, or a judicial officer. The adoption service provider or another person designated by the birth parent or parents may also be present at any interview conducted pursuant to this section to provide support to the birth parent or parents.

The waiver of the right to revoke consent may not be signed until an interview has been completed by the department or delegated county adoption agency unless the waiver of the right to revoke consent is signed in the presence of a judicial officer of a court of record as specified in this section, in which case the interview and the witnessing of the signing of the waiver shall be conducted by the judicial officer. Within 10 working days of a request made after the department, the delegated county adoption agency, or the court has received a copy of the petition for the adoption and the names and addresses of the persons to be interviewed, the department, the delegated county adoption agency, or the court shall interview, at the department or agency office or the court, any birth parent requesting to be interviewed. However, the interview, and the witnessing of the signing of a waiver of the right to revoke consent of a birth parent residing outside of California or located outside of California for an extended period of time unrelated to the adoption may be conducted in the state where the birth parent is located, by any of the following:

(A) A representative of a public adoption agency in that state.

(B) A judicial officer in that state where the birth parent is represented by independent legal counsel.

(C) An adoption service provider.

(3) Allow the consent to become a permanent consent on the 31st day after signing.

(b) The consent may not be revoked after a waiver of the right to revoke consent has been signed or after 30 days, beginning on the date the consent was signed or as provided in paragraph (1) of subdivision (a), whichever occurs first.

CHAPTER 689

An act to add Chapter 10.5 (commencing with Section 9650) to Division 8.5 of the Welfare and Institutions Code, relating to seniors.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. This act shall be known, and may be cited as, the Senior Wellness Act of 2001.

SEC. 2. The Legislature finds and declares all of the following:

(a) The well-being of California's five million seniors can be maintained and enhanced by encouraging and promoting healthy lifestyles.

(b) Proper nutrition, exercise, injury prevention, mental health, and physical health are important factors of overall wellness and can help seniors live better and remain independent longer.

(c) It is the policy of the Legislature to promote and encourage the provision of wellness programs at the state and local levels that educate seniors, caregivers, families, and health care professionals in achieving healthy lifestyles.

SEC. 3. The Legislature also finds and declares all of the following:

(a) Injury prevention is integral to maintaining wellness and avoiding hospitalization so that seniors and persons with disabilities can remain independent in their homes.

(b) The prevalence of falls by older persons is a serious public health concern. One in three persons over the age of 65 years experiences one or more falls each year.

(c) The chances that a fall will result in hospitalization or death begins to increase dramatically for persons 80 years of age and older.

(d) When various factors related to the aging process, such as balance, vision, hearing, medications, or health conditions, which in and of themselves can lead to falls, are combined with environmental hazards such as loose, slippery, or irregular walking surfaces, poor lighting, and lack of basic physical supports, the likelihood of falls significantly increases.

(e) Assessment, consultation, and simple home modifications can prevent many accidents, help people avoid disruptive relocation, and minimize the need for costly personal or institutional care.

(f) Current law and public efforts related to injury prevention and home modification are inadequate or nonexistent in most California communities.

SEC. 4. Chapter 10.5 (commencing with Section 9650) is added to Division 8.5 of the Welfare and Institutions Code, to read:

CHAPTER 10.5. SENIOR WELLNESS PROGRAM

Article 1. General

9650. The definitions contained in this article shall govern the construction of this chapter, unless the context requires otherwise.

9651. ''Wellness'' means optimizing opportunities for physical, social, and mental well-being throughout the course, in order to extend healthy life expectancy, productivity, and quality of life in older age.

9652. ''Senior'' means any person 60 years of age or older.

9653. ''Person with a disability'' means the same as the term is defined by regulations established pursuant to Section 504 of the federal Rehabilitation Act of 1973, as amended in 1992 (29 U.S.C. Sec. 12101 et seq.), and the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

9654. ''StayWell Program'' means the program established pursuant to Article 2 (commencing with Section 9660).

Article 2. StayWell Program

9660. There is in the California Department of Aging a senior wellness program that shall be called the StayWell Program.

9661. The StayWell Program shall have all of the following functions:

(a) Focus on educating California's seniors, as well as caregivers, families, and health care professions, about the importance of living a healthy lifestyle, including, but not limited to, nutrition, exercise, injury prevention, and mental well-being.

(b) Provide information on, and help California's culturally and ethnically diverse seniors and adults with, functional impairments.

(c) Provide educational information on the resources and services available for seniors from both private and public entities in communities throughout the state and the Area Agencies on Aging. The educational material shall accommodate the diverse linguistic needs of various populations in the state, including, but not limited to, English, Spanish, Russian, Chinese, and Braille.

(d) Promote education and training for professionals and caregivers who work directly with seniors in order to maximize wellness.

9662. The department shall deliver, or provide for the delivery of, StayWell Program information through a variety of means, including, but not limited to, the Internet, radio, television, and newspaper advertising, brochures, posters, and newsletters.

9663. This article shall be implemented only to the extent funds are made available for the purposes of this article in the annual Budget Act or another statute.

Article 3. Program for Injury Prevention in the Home Environment

9675. This article shall be known and may be cited as the Program for Injury Prevention in the Home Environment.

9676. The Program for Injury Prevention in the Home Environment is hereby established. The department, through the Senior Housing and Information Support Center in the department, shall provide grants to eligible local level entities for injury prevention information and education programs and services pursuant to this article for the purpose of increasing the awareness and prevention of injuries.

9677. The department may provide a program grant to an eligible local public agency or nonprofit organization for the services specified in Section 9678 and for the following services:

(a) Provision of information and education regarding injury prevention to seniors and persons with disabilities living in the community.

(b) Comprehensive assessment of individual injury prevention needs.

(c) Consultation and instruction in the behavioral, physical, and environmental aspects of injury prevention.

(d) Mitigation of behavioral and physical factors.

9678. (a) The Program for Injury Prevention in the Home Environment shall include funding for injury prevention needs, including injury prevention equipment and activities as well as material and labor costs, for homeowners and renters meeting income requirements established pursuant to subdivision (d). A local level entity

selected to participate in the program shall comply with all of the requirements of this section in implementing the program.

(b) Equipment and activities covered under the program shall include all of the following:

(1) Grab bars, nonskid surfaces, shower seats, and transfer benches.

(2) Indoor and outdoor handrails.

(3) Reconfiguration of furniture and other elements of the physical home environment to reduce hazards.

(c) The payment for injury prevention equipment and services shall not exceed a seven-hundred-dollar ($700) maximum allowance per household.

(d) Eligibility for equipment and services, as described in this section, shall be limited to families, households, and individuals whose incomes do not exceed 80 percent of the county median income, with adjustments for family and household size.

9679. (a) The department, in consultation with groups, including, but not limited to, the State and Local Injury Control section of the State Department of Health Services, and other groups knowledgeable and experienced in senior and disabled injury prevention, such as research-based university gerontology departments with extensive experience and work with the concept of aging in place and the benefits of home modification, a research center on gerontology, as well as local public health agencies, shall develop training and assessment tools necessary for carrying out this article.

(b) The department shall establish service standards that ensure that members of the population needing services under this article are identified and that the services provided assist them in living safely in their homes and apartments. The department shall award grants based upon compliance with these standards. The standards shall include, but not be limited to, a service planning process that is target-population based and includes both of the following:

(1) A determination of the number of clients to be served and the programs and services that will be provided to meet the injury prevention needs of those clients.

(2) Plans for services including outreach, design of injury prevention services, coordination, and access to education and assessment services.

9680. (a) The director shall establish a methodology for awarding grants under this article, in consultation with groups described in subdivision (a) of Section 9679. The director shall consult with these groups to develop criteria for the award of grants and the identification of specific performance measures.

(b) The criteria to be considered in the award of grants shall include, but not be limited to, all of the following:

(1) The description of a plan for providing outreach, prevention, intervention, and evaluation in a cost appropriate manner.

(2) The ability of the local level entities to engage in collaborations with local entities for purposes of program coordination, including, but not limited to, public and private nonprofit agencies that are experienced in injury prevention services, home modification services, home safety services, and services for seniors and persons with disabilities.

(3) The ability of local level entities to gather and utilize other resources to supplant funding provided by the department.

(4) Demonstrated proficiency in, and awareness of, relevant issues in working with senior and disabled populations, particularly in relation to home modification and injury prevention.

(5) The description of the local population to be served, the ability to administer an effective service program, and the degree to which local agencies and advocates will support and collaborate with program efforts.

(6) The geographical representation of the applicants.

(7) The provision of a local match in funds.

(c) The funding provided pursuant to this article shall be sufficient to provide injury prevention education and assessment services and equipment and activities necessary for injury prevention in the home.

9681. (a) Funding of projects pursuant to this article shall be subject to the appropriation of funds by the Legislature in the Budget Act or another statute.

(b) Funds appropriation made pursuant to subdivision (a) shall be expended to fund grants to eligible local public agencies or nonprofit organizations in an amount not to exceed one hundred fifty thousand dollars ($150,000) each.

CHAPTER 690

An act to add Chapter 4.3 (commencing with Section 56400) to Part 30 of the Education Code, relating to children with disabilities, and making an appropriation therefor.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Chapter 4.3 (commencing with Section 56400) is added to Part 30 of the Education Code, to read:

CHAPTER 4.3. FAMILY EMPOWERMENT CENTERS ON DISABILITY

56400. It is the intent of the Legislature, through enactment of this chapter, to the extent feasible, to do all of the following:

(a) Ensure that children and young adults with disabilities are provided a free and appropriate public education in accordance with applicable federal and state law and regulations.

(b) Ensure that children and young adults with disabilities receive the necessary educational support and services they need to complete their education.

(c) Offer parents and guardians of children and young adults with disabilities access to accurate information, specialized training, and peer-to-peer support in their communities.

(d) Ensure that parents, guardians, and families of children and young adults with disabilities are full participants in their child's education, school reform, and comprehensive systems change efforts.

(e) Build upon existing local and regional service delivery systems to improve, expand, and offer coordinated technical assistance to the network of existing resources available for parents, guardians, and families of children and young adults with disabilities.

56402. (a) The State Department of Education shall award grants to establish Family Empowerment Centers on Disability in each of the 32 regions in the state established under the Early Start Family Resource Centers. In the first year of operation, the State Department of Education shall award these grants no later than February 15, 2002. In subsequent years, to the extent funding is available, the State Department of Education shall award these grants no later than February 15 of that year.

(b) Once funding is secured, and annually until all centers are established, the State Department of Education shall submit a report to the appropriate policy committees of the Legislature documenting progress in establishing the centers.

(c) The department shall develop the grant application, with advice from stakeholders, including parents, guardians, and family members of children with disabilities, as well as adults with disabilities and representatives of community agencies serving children and adults with disabilities.

(d) The sum of twenty-five thousand dollars ($25,000) shall be made available to the department, from the funds appropriated for the purposes of this chapter, for the purpose of securing an outside contractor to develop a request for proposal, disseminate the proposal, empanel readers to evaluate the proposals, and cover other costs related to this process.

56404. To be eligible to receive funding to establish Family Empowerment Centers on Disability pursuant to this chapter, applicants shall meet the following organizational requirements:

(a) Be a nonprofit charitable organization organized under the Internal Revenue Code pursuant to paragraph (3) of subdivision (c) of Section 503 of Title 26 of the United States Code.

(b) Be staffed primarily by parents, guardians, and family members of children and young adults with disabilities and by adults with disabilities.

(c) Have as a majority of board members of each center, parents, guardians, and family members of children and young adults with disabilities who have experience with local or regional disability systems and educational resources. Additional members shall include, but not be limited to, persons with disabilities and representatives of community agencies serving adults with disabilities, and other community agencies.

(d) Demonstrate the capacity to provide services in accordance with the family support guidelines developed by the Early Start Family Resource Centers pursuant to Section 95004 of the Government Code and administered by the State Department of Developmental Services, and Parent Training Information Centers established pursuant to Sections 1482 and 1483 of Title 20 of the United States Code.

56406. (a) The State Department of Education shall issue requests for proposals, select grantees, and award grants pursuant to this chapter by not later than February 15, 2002. Grants awarded to Family Empowerment Centers on Disability by the State Department of Education shall be based upon a formula that does the following:

(1) Establishes a minimum base rate of one hundred fifty thousand dollars ($150,000) for each center to provide the basic services pursuant to this chapter and serve parents and guardians of children and young adults from age three years to age 18 years, inclusive, and to those young adults from age 19 years to age 22 years who had an individualized education plan prior to their 18th birthday.

(2) Establishes an allocation mechanism that is determined according to school enrollment of the region served.

(b) Each grant applicant shall demonstrate all of the following:

(1) That the need for training and information for underserved parents and guardians of children and young adults with disabilities in the area to be served will be effectively met.

(2) That services will be delivered in a manner that accomplishes all of the following:

(A) All families have access to services regardless of cultural, linguistic, geographical, socioeconomic, or other similar barriers.

(B) Services are provided in accordance with families' linguistic and cultural preferences and needs.

(C) Services are coordinated with the existing family support organizations within the region.

(D) Promotes positive parent and professional collaboration with local educational agencies, special education local plan areas, and other community agencies.

56408. As a condition of receipt of funds, each Family Empowerment Center on Disability that receives assistance under this chapter and serves the parents and guardians of children and young adults from age three years to age 18 years, inclusive, and those young adults from age 19 years to age 22 years, who had an individualized education plan prior to their 18th birthday shall do all of the following:

(a) Provide training and information that meets the training and information needs of parents and guardians of children and young adults with disabilities living in the area served by the center, particularly those families and individuals who have been underserved .

(b) Work with community-based organizations and state and local agencies serving children with disabilities.

(c) Train and support parents and guardians of children and young adults with disabilities to do the following:

(1) Better understand the nature of their children's disabilities and their children's educational and developmental needs.

(2) Communicate effectively with personnel responsible for providing special education, early intervention, and related services.

(3) Participate in decisionmaking processes and the development of individualized education programs.

(4) Obtain appropriate information regarding the range of options, programs, services, and resources available to assist children and young adults with disabilities and their families.

(5) Participate in school improvement and reform activities.

(6) Advocate for the child's needs in a manner that promotes alternative forms of dispute resolution and positive relationships between parents and professionals .

56410. A statewide Family Empowerment and Disability Council composed of the executive directors for the Family Empowerment Centers on Disability shall be established. Membership on the Family Empowerment and Disability Council may also include the Executive Director or representative from the Family Resource Centers, funded by the Department of Developmental Services, and from the parent centers funded by the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.). The department shall contract with an outside entity experienced with developing a statewide technical assistance disability network. A base amount of one hundred fifty thousand dollars

($150,000) shall be made available, from the annual appropriation made for the Family Empowerment Centers, to support the work of the council. The Family Empowerment and Disability Council shall, at a minimum, do all of the following:

(a) Provide central coordination of training and information dissemination, content, and materials for Family Empowerment Centers on Disability.

(b) Develop a technical assistance system and activities in accordance with a plan developed in conjunction with the directors of the Family Empowerment Centers on Disability.

(c) Ensure that a periodic assessment and evaluation of the service delivery and management of each Family Empowerment Center on Disability conducted by Family Empowerment Center on Disability directors and includes on the assessment and evaluation team at least one parent advocate from another region. The goal shall be to improve center management and the quality and efficiency of services delivered.

(d) Assist each center to build its capacity to serve its geographic region.

(e) Develop uniform tracking and data collection systems, which are not duplicative and interface with existing special education data systems, to be utilized by each Family Empowerment Center on Disability.

(f) Establish outcome-based evaluation procedures and processes to be used by the State Department of Education.

(g) Conduct media outreach and other public education efforts to promote the goals of the Family Empowerment Centers on Disability.

(h) Support and coordinate system change advocacy efforts at the local, state, and national level.

56412. When at least four Family Empowerment Centers on Disability have been in operation for two years, the State Department of Education shall contract, pursuant to funding made available in that fiscal year's Budget Act, with an outside entity to conduct an evaluation of the effectiveness of the services provided by the centers, including, but not limited to, the number of parents who have been trained, the number of cases handled by the centers, an estimate of the number of lawsuits avoided, and the overall effectiveness of the centers.

56414. The State Department of Education is required to implement this chapter only if an appropriation is made for this purpose in the Budget Act.

SEC. 2. (a) The sum of two million three hundred seventy-two thousand dollars ($2,372,000) is hereby appropriated to the State Department of Education from federal funds received pursuant to Section 1411 of Title 20 of the United States Code, in augmentation of schedule (4) of Item 6110-161-0890 of Section 2.00 of the Budget Act

of 2001. These funds shall be used for purposes of Chapter 4.3 (commencing with Section 56400) of Part 30 of the Education Code.

(b) The funds appropriated in subdivision (a) shall be appropriated to and allocated by the State Department of Education without regard to Provision 1 of Item 6110-161-0890 of Section 2.00 of the Budget Act of 2001.

CHAPTER 691

An act to add Sections 1262.5, 1262.6, 1262.7, and 1367.5 to the Health and Safety Code, and to add Sections 10117.5 and 10233.25 to the Insurance Code, relating to health facilities.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. (a) (1) It is the intent of the Legislature that each hospital patient be given information about his or her continuing health care requirements following discharge from the hospital. This is particularly important for patients transferred from a general acute care hospital to a skilled nursing facility or intermediate care facility.

(2) It is further the intent of the Legislature that each hospital patient be informed in writing of the right to information about continuing health care requirements following discharge from the hospital.

(b) (1) The Legislature finds and declares that patients being transferred to a skilled nursing facility or intermediate care facility need information regarding their continuing health care requirements so that they may advocate for appropriate care for themselves.

(2) The right to information regarding continuing health care requirements following discharge applies to the person who has legal responsibility to make decisions regarding medical care on behalf of the patient, if the patient is unable to make those decisions for himself or herself.

(3) In addition, a patient may request that friends or family members be given this information, even if the patient is able to make his or her own decisions regarding medical care.

SEC. 2. Section 1262.5 is added to the Health and Safety Code, to read:

1262.5. (a) Each hospital shall have a written discharge planning policy and process.

(b) The policy required by subdivision (a) shall require that appropriate arrangements for posthospital care, including, but not limited to, care at home, in a skilled nursing or intermediate care facility, or from a hospice, are made prior to discharge for those patients who are likely to suffer adverse health consequences upon discharge if there is no adequate discharge planning. If the hospital determines that the patient and family members or interested persons need to be counseled to prepare them for posthospital care, the hospital shall provide for that counseling.

(c) The process required by subdivision (a) shall require that the patient be informed, orally or in writing, of the continuing health care requirements following discharge from the hospital. The right to information regarding continuing health care requirements following discharge shall apply to the person who has legal responsibility to make decisions regarding medical care on behalf of the patient, if the patient is unable to make those decisions for himself or herself. In addition, a patient may request that friends or family members be given this information, even if the patient is able to make his or her own decisions regarding medical care.

(d) (1) A transfer summary shall accompany the patient upon transfer to a skilled nursing or intermediate care facility or to the distinct part-skilled nursing or intermediate care service unit of the hospital. The transfer summary shall include essential information relative to the patient's diagnosis, hospital course, pain treatment and management, medications, treatments, dietary requirement, rehabilitation potential, known allergies, and treatment plan, and shall be signed by the physician.

(2) A copy of the transfer summary shall be given to the patient and the patient's legal representative, if any, prior to transfer to a skilled nursing or intermediate care facility.

(e) A hospital shall establish and implement a written policy to ensure that each patient receives, at the time of discharge, information regarding each medication dispensed, pursuant to Section 4074 of the Business and Professions Code.

(f) A contract between a general acute care hospital and a health care service plan that is issued, amended, renewed, or delivered on or after January 1, 2002, may not contain a provision that prohibits or restricts any health care facility's compliance with the requirements of this section.

SEC. 3. Section 1262.6 is added to the Health and Safety Code, to read:

1262.6. (a) Each hospital shall provide each patient, upon admission or as soon thereafter as reasonably practical, written information regarding the patient's right to the following:

(1) To be informed of continuing health care requirements following discharge from the hospital.

(2) To be informed that, if the patient so authorizes, that a friend or family member may be provided information about the patient's continuing health care requirements following discharge from the hospital.

(3) Participate actively in decisions regarding medical care. To the extent permitted by law, participation shall include the right to refuse treatment.

(4) Appropriate pain assessment and treatment consistent with Sections 124960 and 124961.

(b) A hospital may include the information required by this section with other notices to the patient regarding patient rights. If a hospital chooses to include this information along with existing notices to the patient regarding patient rights, this information shall be provided when the hospital exhausts its existing inventory of written materials and prints new written materials.

SEC. 4. Section 1262.7 is added to the Health and Safety Code, to read:

1262.7. (a) A skilled nursing facility, as defined in subdivision (c) of Section 1250, shall admit a patient only upon a physician's order and only if the facility is able to provide necessary care for the patient.

(b) The administrator or designee of a skilled nursing facility shall be responsible for screening patients for admission to the facility to ensure that the facility admits only those patients for whom it can provide necessary care. The administrator, or his or her designee, shall conduct preadmission personal interviews as appropriate with the patient's physician, the patient, the patient's next of kin or sponsor, or the representative of the facility from which the patient is being transferred. A telephone interview may be conducted when a personal interview is not feasible.

SEC. 5. Section 1367.5 is added to the Health and Safety Code, to read:

1367.5. No health care service plan contract that is issued, amended, renewed, or delivered on and after January 1, 2002, shall contain a provision that prohibits or restricts any health facilities' compliance with the requirements of Section 1262.5.

SEC. 6. Section 10117.5 is added to the Insurance Code, to read:

10117.5. No disability insurer contract that covers hospital, medical, or surgical benefits that is issued, amended, renewed, or delivered on and after January 1, 2002, shall contain a provision that prohibits or restricts any health facilities' compliance with the requirements of Section 1262.5 of the Health and Safety Code.

SEC. 7. Section 10233.25 is added to the Insurance Code, immediately following Section 10233.2, to read:

10233.25. No long-term care policy or certificate that is issued, amended, renewed, or delivered on and after January 1, 2002, shall contain a provision that prohibits or restricts any health facilities' compliance with the requirements of Section 1262.5 of the Health and Safety Code.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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.

CHAPTER 692

An act to add and repeal Chapter 7 (commencing with Section 4099) of Part 1 of Division 4 of the Welfare and Institutions Code, relating to mental health, and making an appropriation therefor.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

I am signing Senate Bill 639 which would require the California Health and Human Services Agency to develop a strategic plan for improving access to mental health services for persons with Alzheimer's disease or related dementia.

However, given the rapid decline of our economy and a budget shortfall of $1.1 billion through the first three months of this fiscal year alone, I have no choice but to oppose additional General Fund spending. I am directing the Health and Human Services Agency to develop the strategic plan within existing resources.

GRAY DAVIS, Governor

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

SECTION 1. Chapter 7 (commencing with Section 4099) is added to Part 1 of Division 4 of the Welfare and Institutions Code, to read:

CHAPTER 7. STRATEGIC PLAN FOR ALZHEIMER'S DISEASE AND RELATED DISORDERS

4099. The Legislature finds and declares all of the following:

(a) There is no cure for Alzheimer's disease, a progressive neurological disease, that slowly robs its victims of their cognitive and physical abilities.

(b) Seventy percent of persons with Alzheimer's disease reside at home in the community and rely on both formal and informal support to maintain dignity and independence.

(c) The predictable progression of the disease eventually leads to cognitive, behavioral, and personality changes that may include psychiatric symptoms such as anxiety, depression, hallucinations, delusions, and agitation.

(d) Both formal and informal caregivers must address increasingly complex needs that arise from the effects of the disease on the person and frequently find themselves faced with a crisis of care.

(e) Persons who suffer from Alzheimer's disease and individuals whose symptoms are suggestive of a dementia-related condition, when in crisis, often present themselves in overcrowded emergency rooms, while others are identified by law enforcement, who do not have the training or expertise to assess the medical and cognitive condition of the individual and who do not have access to expert assistance.

(f) There are numerous examples of avoidable incarceration, hospitalization, or placement in unnecessarily expensive and inappropriate institutional settings as a result of an episode that could have been stabilized with a rapid, interdisciplinary and coordinated crisis response.

(g) Alzheimer's patients often encounter barriers to accessing effective services in the appropriate setting due to uncoordinated, limited, and exclusionary funding streams.

(h) It is in the interest of the state to design and encourage more humane, effective, and efficient solutions to the significant caregiving crisis that arises from the progression of Alzheimer's disease and other related disorders.

4099.1. For purposes of this chapter, the following definitions apply:

(a) ''Alzheimer's disease or related dementia'' means persons with Alzheimer's disease or related dementia or individuals whose symptoms are suggestive of a dementia-related condition.

(b) ''Caregivers'' means both formal and informal caregivers.

4099.3. The California Health and Human Services Agency shall develop a strategic plan for improving access to mental health services by persons with Alzheimer's disease or related disorders, for treatable mental health conditions. The agency may use consultant services for this purpose. The plan shall be developed with consultation and collaboration with the agency's Alzheimer's Disease and Related Disorders Advisory Committee, the California Mental Health Planning

Council, the State Department of Mental Health, the California Department of Aging, the State Department of Health Services, the California Mental Health Directors Association, the California Council of the Alzheimer's Association, and other departments and organizations, as deemed appropriate by the agency, with expertise and experience in the unique needs of this population. The plan shall be completed and a report submitted to the Governor and the Legislature no later than January 1, 2003.

4099.4. (a) This chapter shall become inoperative on 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 the dates on which it becomes inoperative and is repealed.

(b) This chapter shall be implemented only to the extent that funds are appropriated for this purpose.

SEC. 2. The sum of eighty-five thousand dollars ($85,000) is hereby appropriated, without regard to fiscal years, from the General Fund to the California Health and Human Services Agency, for the purposes of implementing Chapter 7 (commencing with Section 4099) of Part 1 of Division 4 of the Welfare and Institutions Code.

CHAPTER 693

An act to amend Section 4426 of the Business and Professions Code, and to add Division 111 (commencing with Section 130400) to the Health and Safety Code, relating to health, and making an appropriation therefor.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 4426 of the Business and Professions Code is amended to read:

4426. The State Department of Health Services shall conduct a study of the adequacy of Medi-Cal pharmacy reimbursement rates including the cost of providing prescription drugs and services. The department shall report the results of the study to the Legislature by July 1, 2002.

SEC. 2. Division 111 (commencing with Section 130400) is added to the Health and Safety Code, to read:

DIVISION 111. GOLDEN BEAR STATE PHARMACY ASSISTANCE PROGRAM

130400. (a) This division shall be known, and may be cited as, the Golden Bear State Pharmacy Assistance Program.

(b) As used in this division:

(1) ''Department'' means the State Department of Health Services.

(2) ''Fund'' means the Golden Bear State Pharmacy Assistance Program Rebate Fund.

130401. (a) In addition to participating in the program provided for under Article 24 (commencing with Section 4425) of the Business and Professions Code, any Medicare beneficiary may participate in the program provided for under this division.

(b) The department shall conduct an outreach program to inform Medicare beneficiaries of their right to participate in this program. Medicare beneficiaries shall be informed that the amount of the prescription discount shall fluctuate quarterly.

(c) In order to participate in the program provided for under this division, a Medicare beneficiary shall be required to register on a one-time basis. Registration may be made at any pharmacy participating in this program. In order to register for the program, the Medicare beneficiary shall pay to the pharmacy an administrative fee, which the pharmacy shall retain, in an amount to be established by the department. Upon payment of this fee, the pharmacy shall issue a program registration card, which shall be prepared and provided to the pharmacy by the department, to the Medicare beneficiary.

130402. (a) Any pharmacy may participate in the program provided for under this division. However, this division shall apply only to prescriptions dispensed to noninstitutionalized Medicare beneficiaries.

(b) Any drug manufacturer may participate in the program provided for under this division.

130403. (a) The department shall attempt to negotiate rebate amounts with drug manufacturers for all prescription drugs purchased by Medicare beneficiaries.

(b) If the department determines that it is unable to negotiate rebates with a sufficient number of drug manufacturers, it may cease to continue implementation of this division.

130404. (a) With respect to any prescription drug for which a rebate amount has been negotiated pursuant to Section 130403, upon presentation of a program registration card issued pursuant to Section 130401, a participating pharmacy shall charge Medicare beneficiaries a price for a prescription drug that does not exceed the following computed price:

(1) The Medi-Cal reimbursement rate for the prescription drug, and an amount, as set by the department, to cover electronic transmission charges.

(2) The amount ascertained pursuant to paragraph (1) shall be reduced by a percentage to be determined by the department based on the amount of rebate moneys available in the fund.

(b) The pharmacy shall request, and the department shall provide, through electronic means, the price to be charged pursuant to this section.

(c) This division shall not apply to any prescription that is covered by insurance.

130405. Whenever a pharmacy provides a prescription drug to an individual pursuant to Section 130404, the pharmacy shall bill the department for the amount computed pursuant to paragraph (2) of subdivision (a) of Section 130404 and the department shall pay that amount.

130406. (a) The department shall notify a drug manufacturer of all instances in which it has paid a rebate amount pursuant to Section 130405 with respect to one of the manufacturer's drugs.

(b) A drug manufacturer shall pay the department the amount of any rebate of which the drug manufacturer is notified pursuant to subdivision (a).

130407. (a) The department shall deposit all payments received pursuant to Section 130406 into the Golden Bear State Pharmacy Assistance Program Rebate Fund, which is hereby created in the State Treasury.

(b) Notwithstanding Section 13340 of the Government Code, the fund is hereby continuously appropriated to the department without regard to fiscal years for the purpose of paying rebates pursuant to Section 130405 and for defraying the costs of administering this division.

130408. The department shall develop a program to prevent the occurrence of fraud under this division.

130409. The department may hire any staff needed for the implementation of this division. To implement this program, the department may use the contract with the Medi-Cal fiscal intermediary to administer the program and enroll Medicare beneficiaries, collect rebates, and pay claims, only if services provided under this program are specifically identified and reimbursed in a manner that does not claim federal financial reimbursement. For purposes of this division, use of the Medi-Cal program fiscal intermediary shall be exempt from Part 2 (commencing with Section 10100) of Division 1 of the Public Contract Code. This division shall not be implemented unless and until the director executes a declaration, which shall be retained by the director,

stating that all federal approvals necessary for implementation of this division have been received.

SEC. 3. (a) There is hereby appropriated the sum of one million dollars ($1,000,000) from the General Fund to the State Department of Health Services, for deposit in the Golden Bear State Pharmacy Assistance Program Rebate Fund, in order to provide funds for startup costs for implementation of Division 111 (commencing with Section 130400) of the Health and Safety Code. These funds may be used for, among other things, the development of technical systems, and for negotiating rebates with drug manufacturers.

(b) The money appropriated pursuant to this section shall be in the form of a loan. The department shall be required to repay this loan to the General Fund, except to the extent that any moneys have been expended and the provisions of this act are unable to be implemented.

(c) It is the intent of the Legislature to enact legislation that provides for an additional loan of one million dollars ($1,000,000), to be made after the department determines that it has negotiated sufficient rebate agreements to implement this act. The moneys from this second loan would be used for pharmacy rebates until sufficient moneys are paid into the Golden Bear State Pharmacy Assistance Program Rebate Fund.

CHAPTER 694

An act to add and repeal Section 16012 of the Welfare and Institutions Code, relating to foster care, and making an appropriation therefor.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

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

(a) In 1996, the Early Start to Emancipation Program was established in the County of Los Angeles as a means of identifying foster youth as they transitioned from middle school to high school who needed help to thrive during the high school years.

(b) The intent of the Early Start to Emancipation Program is to address the transitional independent living plan adopted by the State Department of Social Services as part of county child welfare services/case management system requirements that determines the level of emancipation readiness of youth under the care of the state. As the youth complete the program's emancipation preparation assessment, which is provided for under a transitional independent living plan, they

are introduced to a series of activities that build on skills and knowledge necessary for school, community, and interpersonal interactions. The program design involves the youth in multilevel, self-paced team activities.

(c) The basic components for the Early Start to Emancipation Program include, but are not limited to, all of the following:

(1) Outreach, assessment, and transitional independent living plan services.

(2) Workshops in which the youth learn skills.

(3) Field assignments for applying skills learned in workshops.

(4) Tutoring.

(5) Career exposure.

(d) The Early Start to Emancipation Program has assessed several thousand youth since 1996, and has provided direct services to many of them.

(e) The Early Start to Emancipation Program currently operating in the County of Los Angeles has been a valuable means of preparing foster youth 14 and 15 years of age for emancipation in a manner that will maximize their chances of graduating from high school and entering college.

(f) It is the intent of the Legislature that the State Department of Social Services establish and implement a foster youth training institute that will train counties in implementing programs similar to the Early Start to Emancipation Program.

SEC. 2. Section 16012 is added to the Welfare and Institutions Code, to read:

16012. (a) The department shall provide technical assistance and training to help counties that elect to establish Early Start to Emancipation programs similar to a program established in the County of Los Angeles that provides services to foster youth 14 and 15 years of age as they transition from middle school to high school.

(b) Services to be provided by these county programs shall include, but are not limited to, outreach and assessment, workshops for high school preparation, and tutoring. Programs shall also establish emancipation teams, which shall include county social workers, group home staff, probation officers, care providers, and other interested parties.

(c) The department, in consultation with the County of Los Angeles and the Community College Foundation, shall adopt regulations necessary to implement this section.

(d) The department may contract with a qualified entity to carry out the provisions of this section.

(e) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 3. (a) The sum of one hundred twenty-five thousand dollars ($125,000) is hereby appropriated from the General Fund to the State Department of Social Services for the purposes specified in subdivision (b).

(b) Of the funds appropriated pursuant to subdivision (a), up to one hundred thousand dollars ($100,000) may be allocated to a county that has already engaged in planning to develop and implement an Early Start to Emancipation Program, for the purpose of developing and implementing a program pursuant to Section 16012 of the Welfare and Institutions Code and for foster youth in the county. The remainder of the funds appropriated pursuant to subdivision (a) shall be used by the department to provide technical assistance to counties pursuant to Section 16012 of the Welfare and Institutions Code.

CHAPTER 695

An act to add Article 8 (commencing with Section 17590) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to advertising.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Article 8 (commencing with Section 17590) is added to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, to read:

Article 8. Unsolicited and Unwanted Telephone Solicitations

17590. (a) There is a compelling state interest to protect the privacy of residential or wireless telephone subscribers who wish to avoid unsolicited and unwanted telephone solicitations. For the purposes of this article, a residential or wireless telephone subscriber shall be referred to as a subscriber.

(b) The act of becoming a subscriber should not undermine or lessen a person's right of privacy as guaranteed under Section 1 of Article I of the California Constitution.

17591. (a) The Attorney General shall not later than January 1, 2003, maintain a ''do not call'' list, updated no less frequently than quarterly, which shall set forth the California telephone numbers and ZIP Codes, but not the names or addresses, of subscribers, arranged by area code and numerical sequence, who do not wish to receive unsolicited and unwanted telephone calls from telephone solicitors as defined in Section 17592. The ''do not call'' list shall indicate any exclusions designated by the subscriber as provided in subdivision (b).

(b) Subscribers may place their telephone numbers and ZIP Codes on the ''do not call'' list in the manner prescribed by the Attorney General. The subscriber's placement on the ''do not call'' list shall expire three years after the date on which the subscriber's telephone number and ZIP Code first became available on the list to telephone solicitors. The Attorney General shall triennially charge these subscribers a fee not to exceed one dollar ($1.00). A subscriber may exclude from the coverage of the ''do not call'' list telephone calls from entities identified by the subscriber. The subscriber shall designate any exclusions in the manner prescribed by the Attorney General.

(c) Telephone solicitors, as defined in Section 17592, shall obtain copies of the ''do not call'' list by paying a fee to the Attorney General in an amount not to exceed the costs incurred by the Attorney General in the preparation, maintenance, production, and distribution of that list. The Attorney General shall establish a sliding scale fee schedule, charging a telephone solicitor with more than 1,000 employees or independent contractors the maximum fee and charging a telephone solicitor with fewer than five full-time employees no fee. The Attorney General shall provide a telephone solicitor the option of paying this fee on a quarterly or annual basis. The Attorney General shall offer a statewide list and shall also offer lists of areas within the state. The determination of the number and definition of areas shall be within the discretion of the Attorney General.

(d) The Attorney General shall utilize the best available, cost-effective technology to ensure that subscribers may easily place their telephone numbers on the ''do not call'' list. This technology includes, but is not limited to, methods by which a subscriber may effect placement on the list by using a state-designated Internet Web site or a designated, statewide toll-free telephone number. When the subscriber utilizes the toll-free telephone number method, the subscriber shall call from the telephone that is also the number to be included on the list. The Attorney General shall also utilize the best available, cost-effective technology to ensure that telephone solicitors may easily obtain and manipulate the ''do not call'' list. This technology may include, but is not limited to, methods that are computer compatible and that allow the downloading of the list and the sorting of the list by ZIP Code and that

make the list available on CD-ROM. The Attorney General may contract with a private vendor to establish, maintain, and administer the ''do not call'' list and a contract entered into in that regard shall include appropriate provisions to protect the confidentiality of subscriber information. The Attorney General may promulgate regulations to implement the provisions of this article.

(e) It is the intent of the Legislature that the fees paid to the Attorney General by telephone solicitors and subscribers be utilized by the Attorney General in carrying out this article. The Attorney General shall annually reduce the amount of the fee paid by subscribers and telephone solicitors set forth in this section based on revenue history and costs so that the fees do not exceed the actual estimated costs in carrying out this article. The fees obtained by the Attorney General shall be deposited in the Special Telephone Solicitors Fund, which is hereby created. All moneys in the fund shall be subject to annual appropriation in the Budget Act.

(f) A person or entity that obtains a ''do not call'' list shall not use the list for any purpose other than to comply with this article. These unlawful purposes include, but are not limited to, causing a subscriber to participate in and be included on, the ''do not call'' list without the subscriber's knowledge or consent, selling or leasing the ''do not call'' list to a person other than a telephone solicitor, selling or leasing by a telephone solicitor of the ''do not call'' list, and a telephone solicitor, either directly or indirectly, persuading a subscriber with whom it has an established business relationship to place his or her telephone number on the ''do not call'' list, if the solicitation has the effect of preventing competitors from contacting that solicitor's customers.

17592. (a) For purposes of this article, a ''telephone solicitor'' means any person or entity who, on his or her own behalf or through salespersons or agents, announcing devices, or otherwise, makes or causes a telephone call to be made to a California telephone number that does any of the following:

(1) Seeks to offer a prize or to rent, sell, exchange, promote, gift, or lease goods or services or documents that can be used to obtain goods or services.

(2) Offers or solicits or seeks to offer or solicit any extension of credit for personal, family, or household purposes.

(3) Seeks marketing information that will or may be used for the direct solicitation of a sale of goods or services to the subscriber.

(4) Seeks to sell or promote any investment, insurance, or financial services.

(5) Seeks to make any telephone solicitation or attempted telephone solicitation as described in Section 17511.1.

(b) A person or entity does not necessarily qualify as a telephone solicitor if the products or services of the person or entity are sold or marketed by an independent contractor whose business practices are not controlled by the person or entity.

(c) Except for telephone calls described in subdivision (e), beginning on the 31st day after the current ''do not call'' list becomes available, no telephone solicitor shall call any telephone number on the then current ''do not call'' list and do any of the following:

(1) Seek to offer a prize or to rent, sell, exchange, promote, gift, or lease goods or services or documents that can be used to obtain goods or services.

(2) Offer or solicit or seeks to offer or solicit any extension of credit for personal, family, or household purposes.

(3) Seek marketing information that will or may be used for the direct solicitation of a sale of goods or services to the subscriber.

(4) Seek to sell or promote any investment, insurance, or financial services.

(5) Seek to make any telephone solicitation or attempted telephone solicitation as described in Section 17511.1.

Between the time that a new ''do not call'' list becomes available and the 31st day thereafter when it becomes effective, telephone solicitors shall not call any telephone number on the previously available ''do not call'' list, if there was a list.

(d) No person or entity that sells, leases, exchanges, or rents telephone solicitation lists, except for directory assistance and telephone directories sold by telephone companies or their affiliates, shall include in those lists those telephone numbers that appear on the current ''do not call'' list.

(e) Subdivision (c) shall not apply to any of the following:

(1) Telephone calls made in response to the express request of the subscriber called, if the request was made prior to the telephone call to the subscriber; an advertisement by the subscriber; or in response to the express, written or electronically written permission of the subscriber obtained pursuant to subdivision (f). ''Express request'' or ''prior written permission'' does not include any consent or permission included in any contract of adhesion. ''Express request'' may include a telephone call from a person or entity who has been provided the subscriber's telephone number and name as a referral from a solicitor with which the subscriber has an established business relationship, if that solicitor has obtained the subscriber's express request for the referral. A telephone call is presumed not to be made at the express request of a subscriber if one of the following occurs, as applicable:

(A) The call is made 30 business days after the last date on which the subscriber contacted a business with the purpose of inquiring about the potential purchase of goods or services.

(B) The call is made 30 business days after the last date on which the subscriber consented to be contacted.

(C) The call is made after the subscriber has requested that no further telephone calls be made to him or her.

(D) The call is made 30 business days after a product or service becomes available where the subscriber has made a request to the business for that product or service that is not then available, and requests a call when the product or service becomes available.

(2) Telephone calls made in connection with the collection of a debt or the offer by a creditor to the subscriber of an extension of credit to pay a delinquent obligation owed by the subscriber to that creditor.

(3) Telephone calls that the subscriber excluded from the coverage of the ''do not call'' list as provided in subdivision (b) of Section 17591.

(4) Telephone calls made to a subscriber if the telephone solicitor has an established business relationship with the subscriber. As used in this article, ''established business relationship'' means a relationship formed by a voluntary, two-way communication between a telephone solicitor and a subscriber with or without an exchange of consideration, on the basis of an application, purchase, rental, lease, or transaction if the relationship has not been terminated by the subscriber or the solicitor. This term also includes a relationship with a nonprofit entity formed through means such as previous donations to the nonprofit entity or participation in or attendance at, events held by the nonprofit entity. If a subscriber purchases or obtains a product or service through a licensed agent or broker, for purposes of this article an established business relationship is created with the licensed agent or broker individually, apart from and in addition to, any established business relationship that may have been created by a licensed agent or broker acting on behalf of another, and the licensed agent or broker is a telephone solicitor, as defined in subdivision (a). Notwithstanding the provisions of this paragraph, an established business relationship does not exist between the subscriber and any separate legal entity associated with the telephone solicitor not acting as an agent or vendor on behalf of the telephone solicitor, as defined in subdivision (a), unless the separate legal entity shares the brand name of a business with which the subscriber has an otherwise established business relationship. If a separate legal entity with which a subscriber does not otherwise have an established business relationship telephones a subscriber on the basis that the entity shares the brand name, and the subscriber instructs the entity to place the subscriber on the entity's ''do not call'' list pursuant to Section 64.1200 of Title 47 of the Code of Federal Regulations and Part 310 of Title 16 of the Code

of Federal Regulations, that instruction shall be binding on the entity with which the subscriber has the established business relationship, with the entity that has the shared brand name, and all other entities that share that brand name. Separate legal entities include, but are not limited to, any parent company or entity, any subsidiary company or entity, any partnership or copartner, any joint venture or venturer, association member, or comember, or any affiliated company or entity.

(5) Telephone calls made by an individual businessperson or a small business if the individual businessperson or small business employs no more than five full or part-time employees or independent contractors, the individual businessperson or a principal of the small business makes the telephone calls himself or herself for the sale of goods or services offered by that individual businessperson or small business, and the telephone calls are made to subscribers within a 50-mile radius of the location of the individual businessperson or small business. For purposes of this section, the services offered by the individual businessperson or small business cannot be telemarketing services. For purposes of this section, those independent contractors and employees with whom an individual businessperson or a small business is required to have a written independent contractor or employment agreement pursuant to a regulatory scheme to ensure regulatory accountability of those independent contractors or employees, are not counted against the total referenced above.

(6) A telephone call made solely to verify that a subscriber, and not an unauthorized third party, has terminated an established business relationship.

(7) Telephone calls made by a tax-exempt charitable organization.

(f) Nothing in this section prohibits a telephone solicitor from contacting by mail a subscriber whose telephone number appears on the ''do not call'' list to obtain the subscriber's express written permission allowing the telephone solicitor to make the calls described in subdivision (c). In any dispute regarding whether a subscriber has provided this express written permission, the telephone solicitor has the burden of proving that the subscriber has provided this permission by producing the original or a facsimile document, signed by the subscriber, evidencing that permission.

17593. (a) The Attorney General, a district attorney, or a city attorney may bring a civil action in any court of competent jurisdiction against a telephone solicitor to enforce the article and to obtain any one or more of the following remedies:

(1) An order to enjoin the violation.

(2) A civil penalty of up to five hundred dollars ($500) for the first violation and up to one thousand dollars ($1,000) for a second and each subsequent violation. The civil penalties obtained shall be used to defray

any administrative costs associated with the implementation of this article.

(3) Any other relief that the court deems proper.

(b) Any person who has received a telephone solicitation that is prohibited by Section 17592, or whose telephone number was used in violation of subdivision (f) of Section 17591, may bring a civil action in small claims court for an injunction or order to prevent further violations. If a person obtains an injunction or order under this subdivision and service of the injunction or order is properly effected, a person who thereafter receives further solicitations in violation of the injunction or order within 30 days after service of the initial injunction or order, may file a subsequent action in small claims court seeking enforcement of the injunction or order and a civil penalty to be awarded to the person in an amount up to one thousand dollars ($1,000). For purposes of this subdivision, a person's claims may not be aggregated to establish jurisdiction in a court other than small claims court. For purposes of this subdivision, a defendant is not required to personally appear, but may appear by affidavit or by written instrument.

(c) The rights, remedies, and penalties established by this article are in addition to the rights, remedies, or penalties established under other laws.

(d) It shall be an affirmative defense to any action brought under this article that the violation was accidental and in violation of the telephone solicitor's policies and procedures and telemarketer instruction and training.

17594. A ''do not call'' list prepared or maintained by the Attorney General and any information submitted to the Attorney General by a subscriber for use in preparing or maintaining that list shall not be disclosed pursuant to a request made under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

17595. If a federal agency, pursuant to paragraph (3) of subsection (c) of Section 227 of Title 47 of the United States Code, establishes a single national data base of telephone numbers of subscribers who object to receiving telephone solicitations the department shall include the part of that single national data base that relates to California in the ''do not call'' list established by Section 17591.

SEC. 2. The provisions of this act are severable. If any provision of this article 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. 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.

CHAPTER 696

An act to add Section 2875.5 to the Public Utilities Code, relating to public utilities.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

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

SECTION 1. Section 2875.5 is added to the Public Utilities Code, to read:

2875.5. (a) On and after July 1, 2002, no person operating any automatic equipment that incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called may make a telephone connection for which no person, acting as an agent or telemarketer, is available for the person called.

(b) Notwithstanding subdivision (a), the commission shall establish an acceptable error rate for telephone connections made in violation of subdivision (a). The commission shall determine the error rate, if any, before July 1, 2002.

(c) The commission may require any person operating equipment as described in subdivision (a) to maintain records of telephone connections made for which no person, acting as an agent or telemarketer, is available for the person called. The commission may require copies of those records to be submitted to the commission.

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.

CHAPTER 697

An act to add and repeal Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25 of the Education Code, relating to certificated school employees.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 11, 2001.]

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

SECTION 1. Article 4.6 (commencing with Section 44510) is added to Chapter 3 of Part 25 of the Education Code, to read:

Article 4.6. Principal Training Program

44510. (a) This article shall be known and may be cited as the Principal Training Program.

(b) The Principal Training Program is hereby created. The Superintendent of Public Instruction, with the approval of the State Board of Education, shall administer the program.

(c) For purposes of this article, the following terms have the following meanings:

(1) ''Hard-to-staff school'' means a school in which teachers holding emergency permits or credential waivers make up 20 percent or more of the teaching staff.

(2) ''Local education agency'' means a school district, a county office of education, or a charter school.

(3) ''Low-performing school'' means a school in the bottom half of all schools based on the Academic Performance Index rankings established pursuant to subdivision (a) of Section 52056.

(4) ''Schoolsite administrator'' means a person employed on a full-time or a part-time basis as a principal or a vice principal at a public school in which kindergarten or any of grades 1 to 12, inclusive, are taught.

44511. (a) From funds appropriated for the purpose of this article, the Superintendent of Public Instruction shall award incentive funding to provide schoolsite administrators with instruction and training in areas including, but not limited to, the following:

(1) School financial and personnel management.

(2) Core academic standards.

(3) Curriculum frameworks and instructional materials aligned to the state academic standards.

(4) The use of pupil assessment instruments, specific ways of mastering the use of assessment data from the Standardized Testing and

Reporting Program, and school management technology to improve pupil performance.

(5) The provision of instructional leadership and management strategies regarding the use of instructional technology to improve pupil performance.

(6) Extension of the knowledge, skills, and abilities acquired in the preliminary administrative preparation program that is designed to strengthen the ability of administrators to serve all pupils in the school to which they are assigned.

(b) The additional instruction and training areas that may be considered to improve pupil learning and achievement based upon the needs of participating schoolsite administrators, include pedagogies of learning, motivating pupil learning, collaboration, conflict resolution, diversity, parental involvement, employee relations, and the creation of effective learning and workplace environments.

(c) All local education agencies are eligible to apply for funds appropriated for the purpose of this article.

44512. (a) To receive incentive funding for the purpose of this article, a local education agency, individually or in partnership with one or more institutions of higher education or other education entities, shall submit a program proposal to the State Board of Education. The program proposal shall contain an expenditure plan and shall specify how the training program for which funding is being requested addresses the program goals specified in paragraphs (1) to (6), inclusive, of subdivision (a) of Section 44511 and how the local education agency plans to continue ongoing schoolsite administrator professional development.

(b) The State Board of Education shall approve or disapprove a local education agency's plan.

(c) Training programs offered pursuant to this article shall have a duration of no fewer than 80 hours and shall involve a minimum of 80 hours of intensive individualized support and professional development in the areas specified in subdivision (a) of Section 44511. The additional 80 hours of intensive individualized support and professional development may be completed over a period of up to two years once the initial 80 hours of training commences.

44513. (a) Before September 15, 2001, the State Board of Education shall convene and commence the process of developing rigorous criteria for the approval of state-qualified training providers. The board shall develop the criteria in consultation with the Commission on Teacher Credentialing or any other individual or group with expertise in the areas set forth in subdivision (a) of Section 44511.

(b) A local education agency that receives funding pursuant to this article shall use a state-qualified provider to offer training that has been approved by the State Board of Education.

(c) The Commission on Teacher Credentialing may approve a program developed pursuant to this article as meeting a portion or all of the requirements to fulfill the standards for a professional clear administrative services credential.

44514. (a) Incentive funding amounts for purposes of this article may not exceed three thousand dollars ($3,000) per schoolsite administrator. This funding shall be received by a local education agency in accordance with the specifications contained in Section 44515 once the local education agency's training plan is approved by the State Board of Education. For each three thousand dollars ($3,000) that is received pursuant to this article, a participating local education agency shall provide one thousand dollars ($1,000) in matching funds that shall be used for costs associated with training offered pursuant to this article. Any combination of local, federal, or private resources or contributions may be used for the local agency's match. In-kind resources or in-kind contributions may not be used for the local agency's match.

(b) If it is determined pursuant to a program audit that a participating local educational agency failed to provide training as described in subdivision (a) of Section 44511 and subdivision (c) of Section 44512 to all school administrators for whom it received funding, the Superintendent of Public Instruction shall withhold from the local education agency's next monthly principal apportionment three thousand dollars ($3,000) for each school administrator who did not receive the training.

(c) The State Board of Education shall establish a procedure and criteria for local education agencies to appeal to the board the finding of a program audit pursuant to this article. The State Board of Education may reduce or eliminate the amount to be withheld pursuant to subdivision (b).

44515. (a) Program funding is intended to serve one-third of the total number of public school principals and vice principals in each of the first two years of program implementation, with the remaining public school principals and vice principals to be served in the third and final year of the program.

(b) A local education agency shall receive program funding to train up to one-third of its schoolsite administrators in the 2001–02 fiscal year, one-third in the 2002–03 fiscal year, and one-third in the 2003–04 fiscal year.

(c) If all of the statewide funding is not expended in a fiscal year, it may be redistributed on a pro rata basis to local education agencies that

have served more than one-third of their schoolsite administrators during that fiscal year.

(d) It is the intent of the Legislature that a local education agency give highest priority to training administrators assigned to, and practicing in, low-performing or hard-to-staff schools.

44516. (a) By July 1, 2004, the State Department of Education shall develop, subject to review and approval by the State Board of Education, an interim report for submission to the Legislature regarding the status of the program established pursuant to this article. The interim report shall, at a minimum, detail the following:

(1) The number of principals and vice principals, respectively, who received training offered pursuant to this article.

(2) The entities that received funds for the purpose of offering training pursuant to this article and the number of principals and vice principals, respectively, that each has trained.

(3) A comparison of the Academic Performance Index scores for schools within participating local education agencies for the year before the school's administrators receive training pursuant to this article and for the first year after the school's administrators complete the training provided pursuant to this article.

(4) Relevant data required to be included in the school accountability report card pursuant to Section 33126.

(b) By June 30, 2005, the State Department of Education shall develop, subject to review and approval by the State Board of Education, a final report for submission to the Legislature regarding the program established pursuant to this article. The final report shall, at a minimum, detail the following:

(1) The number of principals and vice principals, respectively, who received training offered pursuant to this article.

(2) The entities that received funds for the purpose of offering training pursuant to this article and the number of principals and vice principals, respectively, that each has trained.

(3) Information detailing the effectiveness of the program established pursuant to this article. This information, at a minimum, shall incorporate survey data concerning program effectiveness that has been gathered from program participants.

(4) Information detailing the retention rate of principals and vice principals, respectively, who participated in training offered pursuant to this article.

(5) A comparison of the Academic Performance Index scores for schools within participating local education agencies for the year before the school's administrators receive training pursuant to this article and for the second year after the school's administrators complete the training provided pursuant to this article.

(6) Relevant data required to be included in the school accountability report card pursuant to Section 33126.

44517. This article shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 698

An act to amend Sections 6380 and 6383 of the Family Code, and to amend Section 136.2 of the Penal Code, relating to victim and witness intimidation.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 11, 2001.]

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

SECTION 1. The Legislature recognizes that both criminal courts and civil courts may issue protective orders or restraining orders to prevent domestic violence. Orders issued by the criminal court also serve to protect the safety of a victim or a witness in a criminal proceeding. In addition, a restrained person and the victim or witness may have a child or children in common, and, if a court deems it appropriate to grant visitation, civil protective or restraining orders may permit contact between the parties for exchange of the child or children. In those cases, it is the intent of the Legislature to (a) permit appropriate visitation between a defendant and his or her children pursuant to civil court orders, but at the same time provide for the safety of the victim or witness by ensuring that a ''no contact'' order issued by the criminal court is not violated, and (b) request the Judicial Council to establish a protocol for the timely coordination of multiple orders that involve the same parties. The purpose of the protocol is to protect the rights of all parties and enhance the ability of law enforcement to enforce orders.

SEC. 2. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of

maintaining and preserving the integrity of both the CLETS and the Domestic Violence Restraining Order System, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued, modified, extended, or terminated under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or the issuance of a protective order pursuant to Section 15657.03 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective or restraining order issued by the court of another state, as defined in Section 145, or a military tribunal or tribe, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Restraining Order System and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, it shall be on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice, and the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective

order is enforceable in any state, as defined in Section 145, or on a reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, ''electronic transmission'' shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

(i) Only protective and restraining orders issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice shall be transmitted to the Department of Justice. However, this provision shall not apply to a valid protective or restraining order related to domestic or family violence issued by a court of another state, as defined in Section 145, a military tribunal, or a tribe. Those orders shall, upon request, be registered pursuant to Section 6380.5.

SEC. 2.5. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Restraining Order System, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued, modified, extended, or terminated under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or the issuance of a protective order pursuant to Section 15657.03 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective or restraining order issued by the tribunal of another state, as defined in Section 6401, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name

of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Restraining Order System and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, it shall be on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice, and the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, as defined in Section 6401, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, ''electronic transmission'' shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

(i) Only protective and restraining orders issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice shall be transmitted to the Department of Justice. However, this provision shall not apply to a valid protective or restraining order related to domestic or family violence issued by a tribunal of another state, as defined in Section 6401. Those orders shall, upon request, be registered pursuant to Section 6404.

SEC. 3. Section 6383 of the Family Code is amended to read:

6383. (a) A temporary restraining order or emergency protective order issued under this part shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported domestic violence involving the parties to the proceeding.

(b) The petitioner shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and transmit to the issuing court.

(c) It is a rebuttable presumption that the proof of service was signed on the date of service.

(d) Upon receiving information at the scene of a domestic violence incident that a protective order has been issued under this part, or that a person who has been taken into custody is the respondent to such an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately inquire of the Department of Justice Domestic Violence Restraining Order System to verify the existence of the order.

(e) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order. Verbal notice of the terms of the order is sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code.

(f) If a report is required under Section 13730 of the Penal Code, or if no report is required, then in the daily incident log, the officer shall provide the name and assignment of the officer notifying the respondent pursuant to subdivision (e) and the case number of the order.

(g) Upon service of the order outside of the court, a law enforcement officer shall advise the respondent to go to the local court to obtain a copy of the order containing the full terms and conditions of the order.

(h) There shall be no civil liability on the part of, and no cause of action for, false arrest or false imprisonment against any peace officer who makes an arrest pursuant to a protective or restraining order that is regular upon its face, if the peace officer in making the arrest acts in good faith and has reasonable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order. If there is more than one civil order regarding the same parties, the peace officer shall enforce the order that was issued last. If there are both civil and criminal orders regarding the same parties, the peace officer shall enforce the criminal order issued last, subject to the provisions of subdivisions (h) and (i) of Section 136.2 of the Penal Code. Nothing in this section shall be deemed to exonerate a peace officer from liability for the unreasonable use of force in the enforcement of the order. The immunities afforded by this section shall not affect the availability of any other immunity which may apply, including, but not limited to, Sections 820.2 and 820.4 of the Government Code.

SEC. 4. Section 136.2 of the Penal Code is amended to read:

136.2. Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to

occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(a) Any order issued pursuant to Section 6320 of the Family Code.

(b) An order that a defendant shall not violate any provision of Section 136.1.

(c) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(d) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(e) An order calling for a hearing to determine if an order as described in subdivisions (a) to (d), inclusive, should be issued.

(f) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this subdivision, ''immediate family members'' include the spouse, children, or parents of the victim or witness.

(g) Any order protecting victims of violent crime from contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this subdivision to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this subdivision to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

Any order issued, modified, extended, or terminated by a court pursuant to this subdivision shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council

and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

Any person violating any order made pursuant to subdivisions (a) to (g), inclusive, may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(h) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (i).

(i) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a ''no contact order'' issued by a criminal court.

(2) Safety of all parties shall be the courts' paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(j) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 5. The provisions of this act shall be implemented on January 1, 2003.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 6380 of the Family Code proposed by both this bill and AB 731. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 6380 of the Family Code, and (3) this bill is enacted after AB 731, in which case Section 2 of this bill shall not become operative.

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

CHAPTER 699

An act to amend Sections 1303, 10800, 10804, and 10810 of the Probate Code, relating to estates and trusts.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 11, 2001.]

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

SECTION 1. Section 1303 of the Probate Code is amended to read:

1303. With respect to a decedent's estate, the grant or refusal to grant the following orders is appealable:

(a) Granting or revoking letters to a personal representative, except letters of special administration or letters of special administration with general powers.

(b) Admitting a will to probate or revoking the probate of a will.

(c) Setting aside a small estate under Section 6609.

(d) Setting apart a probate homestead or property claimed to be exempt from enforcement of a money judgment.

(e) Granting, modifying, or terminating a family allowance.

(f) Determining heirship, succession, entitlement, or the persons to whom distribution should be made.

(g) Directing distribution of property.

(h) Determining that property passes to, or confirming that property belongs to, the surviving spouse under Section 13656.

(i) Authorizing a personal representative to invest or reinvest surplus money under Section 9732.

(j) Determining whether an action constitutes a contest under Chapter 2 (commencing with Section 21320) of Part 3 of Division 11.

(k) Determining the priority of debts under Chapter 3 (commencing with Section 11440) of Part 9 of Division 7.

(*l*) Any final order under Chapter 1 (commencing with Section 20100) or Chapter 2 (commencing with Section 20200) of Division 10.

SEC. 2. Section 10800 of the Probate Code is amended to read:

10800. (a) Subject to the provisions of this part, for ordinary services the personal representative shall receive compensation based on the value of the estate accounted for by the personal representative, as follows:

(1) Four percent on the first one hundred thousand dollars ($100,000).

(2) Three percent on the next one hundred thousand dollars ($100,000).

(3) Two percent on the next eight hundred thousand dollars ($800,000).

(4) One percent on the next nine million dollars ($9,000,000).

(5) One-half of one percent on the next fifteen million dollars ($15,000,000).

(6) For all amounts above twenty-five million dollars ($25,000,000), a reasonable amount to be determined by the court.

(b) For the purposes of this section, the value of the estate accounted for by the personal representative is the total amount of the appraisal value of property in the inventory, plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales, without reference to encumbrances or other obligations on estate property.

SEC. 3. Section 10804 of the Probate Code is amended to read:

10804. Notwithstanding any provision in the decedent's will, a personal representative who is an attorney shall be entitled to receive the personal representative's compensation as provided in this part, but shall not receive compensation for services as the attorney for the personal representative unless the court specifically approves the right to the compensation in advance and finds that the arrangement is to the advantage, benefit, and best interests of the decedent's estate.

SEC. 4. Section 10810 of the Probate Code is amended to read:

10810. (a) Subject to the provisions of this part, for ordinary services the attorney for the personal representative shall receive

compensation based on the value of the estate accounted for by the personal representative, as follows:

(1) Four percent on the first one hundred thousand dollars ($100,000).

(2) Three percent on the next one hundred thousand dollars ($100,000).

(3) Two percent on the next eight hundred thousand dollars ($800,000).

(4) One percent on the next nine million dollars ($9,000,000).

(5) One-half of 1 percent on the next fifteen million dollars ($15,000,000).

(6) For all amounts above twenty-five million dollars ($25,000,000), a reasonable amount to be determined by the court.

(b) For the purposes of this section, the value of the estate accounted for by the personal representative is the total amount of the appraisal of property in the inventory, plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales, without reference to encumbrances or other obligations on estate property.

CHAPTER 700

An act to add Section 13286 to the Water Code, relating to water.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 11, 2001.]

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

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

(a) The rising nitrate levels in the groundwater of the Whitewater River Subbasin of the Upper Coachella Valley Groundwater Basin are caused by the continued use of individual residential and commercial subsurface disposal systems, which discharge more than one million gallons of wastewater daily into the ground within the Cove area of Cathedral City in Riverside County.

(b) The continued use of individual residential and commercial subsurface disposal systems within the Cove area of Cathedral City will result in violations of water quality objectives, impair present and future beneficial uses of water, and cause pollution and contamination of the groundwater of the Whitewater River Subbasin of the Upper Coachella Valley Groundwater Basin that is used as a water supply for much of the greater Coachella Valley.

(c) Adequate protection of the quality and beneficial use of the groundwater of the Whitewater River Subbasin of the Upper Coachella Valley Groundwater Basin and the prevention of pollution and contamination of that groundwater caused by the use of individual residential and commercial subsurface disposal systems cannot be sufficiently achieved by redesign, relocation, alterations to size and spacing, reconstruction, or increased maintenance of existing individual disposal systems.

(d) The only viable alternative to the continued use of existing substandard individual disposal systems that utilize subsurface disposal within the Cove area of Cathedral City is the construction and installation of a sanitary public domestic and commercial wastewater disposal system in the Cove area and to prohibit the continued discharge of wastewater into the ground through the use of individual subsurface disposal systems.

(e) Without the construction and installation of a sanitary public domestic and commercial wastewater disposal system in the Cove area, the city will be unable to meet the water quality objectives adopted by the regional water quality control board.

(f) A wastewater disposal system is necessary to adequately meet the Coachella Valley's needs for present and probable future beneficial uses of water and to ensure the valley's quality of available water continues to meet or exceed minimum standards.

(g) In the interest of achieving the applicable water quality objectives, it is necessary to protect present and future beneficial uses of the groundwater of the Upper Coachella Valley Groundwater Basin and to prevent any further pollution and contamination of that groundwater by immediately constructing and installing a sanitary public domestic and commercial wastewater disposal system in the Cove area of Cathedral City and prohibiting the discharge of wastewater into the ground through the use of individual subsurface disposal systems.

(h) In order to protect the health and safety of the citizens currently consuming the groundwater of the Upper Coachella Valley Groundwater Basin, a sanitary public domestic and commercial wastewater disposal system should be immediately constructed and installed in the Cove area of Cathedral City and the discharge of wastewater into the ground through the use of individual subsurface disposal systems should be prohibited.

SEC. 2. Section 13286 is added to the Water Code, to read:

13286. (a) On and after January 1, 2012, the appropriate regional board shall prohibit the discharge of wastewater into the ground through the use of individual subsurface disposal systems in the Cove area of Cathedral City in Riverside County for the purposes of protecting the health and safety of the residents consuming the groundwater of the

Upper Coachella Valley Groundwater Basin and achieving the applicable water quality objectives.

(b) The appropriate regional board shall revise its water quality control plan to reflect the prohibition set forth in subdivision (a).

(c) Notwithstanding subdivisions (a) and (b), the appropriate regional board, prior to January 1, 2012, may prohibit the discharge of wastewater through the use of individual subsurface disposal systems in the Cove area of Cathedral City in Riverside County, and if so prohibited, that board shall revise its water quality control plan to reflect the prohibition.

(d) To ensure that the purposes of this section are fulfilled, the state board, using existing resources, shall assist Cathedral City to identify and obtain state and federal funds to establish a sanitary public domestic and commercial wastewater disposal system.

CHAPTER 701

An act to add and repeal Section 21158.6 of the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 11, 2001.]

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

SECTION 1. Section 21158.6 is added to the Public Resources Code, to read:

21158.6. (a) For a project in the City of Oakland that consists of multiple-family residential development, or a residential and commercial or retail mixed-use development with not more than 25 percent of the total floor area of the project utilized as retail space, a focused environmental impact report may be prepared, notwithstanding that the project was not identified in a master environmental impact report, if all of the following conditions are met:

(1) The Oakland City Council does both of the following:

(A) Authorizes the implementation of this section. The city council may authorize the implementation of this section only by voting to approve the practice of preparing focused environmental impact reports for projects in the central business district housing target areas specified in paragraph (10).

(B) Determines that the general plan, zoning ordinance, and related policies and programs are consistent with principles that encourage compact development in a manner that does both of the following:

(i) Promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing.

(ii) Protects the environment, open space, and agricultural areas.

(2) The city submits a draft determination to the Office of Planning and Research that the applicable general plan, zoning ordinance, and any related policies and programs are consistent with the principles described in subparagraph (B) of paragraph (1) prior to the city council making its determination regarding that consistency. The office may submit comments on the draft findings to the city council within 30 days from the date that the city submits the draft determination to the office.

(3) The city has an average population density of at least 5,000 persons per square mile.

(4) The project is consistent with the general plan, any applicable specific plan and community plan, and zoning ordinance, including any variance that is properly granted pursuant to that zoning ordinance, an environmental impact report was prepared for the general plan, and the application for the project is deemed complete pursuant to Section 65943 of the Government Code within 3 years of the date this section is effective.

(5) The lead agency cannot make the finding described in subdivision (c) of Section 21157.1, a negative declaration or mitigated negative declaration cannot be prepared pursuant to Section 21080, 21157.5, or 21158, and Section 21166 does not apply.

(6) The project meets one or both of the following conditions:

(A) The parcel on which the project is to be developed is surrounded by immediately contiguous urban development.

(B) The parcel on which the project is to be developed is, or has been previously, developed with urban uses.

(7) The density of the project is at least 40 units per net acre.

(8) The parcel on which the project is to be developed is within one-half mile of an existing rail transit station.

(9) The project can be adequately served by existing utilities and municipal services, and there will be adequate capacity for infrastructure, utilities, and services to serve other projects approved and proposed in the service area.

(10) The project does not include a single level building that exceeds the square footage limitation specified in subdivision (a) of Section 21158.5.

(11) The project is located in one of the following central business district housing target areas:

(A) The Valdez cluster, which is bounded on the west by Telegraph Avenue, on the south by 23rd Street, on the east by Harrison Street, and on the north by 27th Street. A project located in this cluster that meets

the condition described in paragraph (8) may include a portion up to one acre that does not meet that condition.

(B) The Uptown cluster, which is bounded on the west by Castro Street, on the south by 14th Street from Castro Street to Jefferson Street and 16th Street from Jefferson Street to Broadway, on the east by Jefferson Street from 14th Street to 16th Street and Broadway from 16th Street to 22nd Street, and on the north by 22nd Street.

(C) The 11th Street cluster, which is bounded by Franklin Street from 12th Street to 15th Street, by Webster from 11th Street to 12th Street, by Alice Street from 11th Street to 13th Street, by 12th Street from Franklin Street to Webster Street, by 11th Street from Webster Street to Alice Street and 13th Street from Alice Street to Madison Street, and on the east by Madison Street from 13th Street to 15th Street, and on the north by 15th Street from Franklin Street to Madison Street.

(D) The Old Oakland cluster, which is bounded on the west by Castro Street, on the south by 7th Street, on the east by Broadway, and on the north by 11th Street.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

(c) (1) On or before July 1, 2004, the city shall submit a report to the Office of Planning and Research that includes, but that is not necessarily limited to, all of the following information:

(A) The number of focused environmental impact reports prepared pursuant to this section.

(B) The types of projects for which focused environmental impact reports were prepared pursuant to this section.

(C) The time periods for preparing each of the focused environmental impact reports prepared pursuant to this section, and for acting on each project from the date that the application was deemed complete.

(D) A description of any alternatives to a project, cumulative impacts of a project, growth inducing impacts of a project, or other issues that may have been identified and analyzed if an environmental document, other than a focused environmental impact report, had been prepared for the project.

(2) Prior to submitting the report to the office pursuant to paragraph (1), the city shall hold at least one public hearing and shall respond to oral and written comments regarding the draft report. The city shall include the comments and responses in the final report.

(d) 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. (a) A focused environmental impact report may be prepared for a project if that project fulfills the conditions specified in Section 21158.6 of the Public Resources Code prior to the date that section is repealed.

(b) An action by a city council pursuant to paragraph (1) of subdivision (a) of Section 21158.6 of the Public Resources Code, does not constitute a project for the purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 4. Due to the unique circumstances within the City of Oakland relating to the critical need for infill development in urban areas, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to assist the City of Oakland in fulfilling responsibilities imposed by the California Environmental Quality Act in a manner that involves the public and public agencies at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 702

An act to amend Section 914 of the Family Code, relating to marital liability.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 11, 2001.]

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

SECTION 1. Section 914 of the Family Code is amended to read:

914. (a) Notwithstanding Section 913, a married person is personally liable for the following debts incurred by the person's spouse during marriage:

(1) A debt incurred for necessaries of life of the person's spouse while the spouses are living together.

(2) Except as provided in Section 4302, a debt incurred for common necessaries of life of the person's spouse while the spouses are living separately.

(b) The separate property of a married person may be applied to the satisfaction of a debt for which the person is personally liable pursuant to this section. If separate property is so applied at a time when nonexempt property in the community estate or separate property of the person's spouse is available but is not applied to the satisfaction of the debt, the married person is entitled to reimbursement to the extent such property was available.

(c) (1) Except as provided in paragraph (2), the statute of limitations set forth in Section 366.2 of the Code of Civil Procedure shall apply if the spouse for whom the married person is personally liable dies .

(2) If the surviving spouse had actual knowledge of the debt prior to expiration of the period set forth in Section 366.2 and the personal representative of the deceased spouse's estate failed to provide the creditor asserting the claim under this section with a timely written notice of the probate administration of the estate in the manner provided for pursuant to Section 9050 of the Probate Code, the statute of limitations set forth in Section 337 or 339, as applicable, shall apply.

CHAPTER 703

An act to amend Sections 1101, 2100, 2102, 2105, 2106, 2107, and 2122 of the Family Code, relating to dissolution of marriage.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 11, 2001.]

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

SECTION 1. Section 1101 of the Family Code is amended to read:

1101. (a) A spouse has a claim against the other spouse for any breach of the fiduciary duty that results in impairment to the claimant spouse's present undivided one-half interest in the community estate, including, but not limited to, a single transaction or a pattern or series of transactions, which transaction or transactions have caused or will cause a detrimental impact to the claimant spouse's undivided one-half interest in the community estate.

(b) A court may order an accounting of the property and obligations of the parties to a marriage and may determine the rights of ownership

in, the beneficial enjoyment of, or access to, community property, and the classification of all property of the parties to a marriage.

(c) A court may order that the name of a spouse shall be added to community property held in the name of the other spouse alone or that the title of community property held in some other title form shall be reformed to reflect its community character, except with respect to any of the following:

(1) A partnership interest held by the other spouse as a general partner.

(2) An interest in a professional corporation or professional association.

(3) An asset of an unincorporated business if the other spouse is the only spouse involved in operating and managing the business.

(4) Any other property, if the revision would adversely affect the rights of a third person.

(d) (1) Except as provided in paragraph (2), any action under subdivision (a) shall be commenced within three years of the date a petitioning spouse had actual knowledge that the transaction or event for which the remedy is being sought occurred.

(2) An action may be commenced under this section upon the death of a spouse or in conjunction with an action for legal separation, dissolution of marriage, or nullity without regard to the time limitations set forth in paragraph (1).

(3) The defense of laches may be raised in any action brought under this section.

(4) Except as to actions authorized by paragraph (2), remedies under subdivision (a) apply only to transactions or events occurring on or after July 1, 1987.

(e) In any transaction affecting community property in which the consent of both spouses is required, the court may, upon the motion of a spouse, dispense with the requirement of the other spouse's consent if both of the following requirements are met:

(1) The proposed transaction is in the best interest of the community.

(2) Consent has been arbitrarily refused or cannot be obtained due to the physical incapacity, mental incapacity, or prolonged absence of the nonconsenting spouse.

(f) Any action may be brought under this section without filing an action for dissolution of marriage, legal separation, or nullity, or may be brought in conjunction with the action or upon the death of a spouse.

(g) Remedies for breach of the fiduciary duty by one spouse, including those set out in Sections 721 and 1100, shall include, but not be limited to, an award to the other spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty plus attorney's fees and court costs. The value of the

asset shall be determined to be its highest value at the date of the breach of the fiduciary duty, the date of the sale or disposition of the asset, or the date of the award by the court.

(h) Remedies for the breach of the fiduciary duty by one spouse, as set forth in Sections 721 and 1100, when the breach falls within the ambit of Section 3294 of the Civil Code shall include, but not be limited to, an award to the other spouse of 100 percent, or an amount equal to 100 percent, of any asset undisclosed or transferred in breach of the fiduciary duty.

SEC. 2. Section 2100 of the Family Code is amended to read:

2100. The Legislature finds and declares the following:

(a) It is the policy of the State of California (1) to marshal, preserve, and protect community and quasi-community assets and liabilities that exist at the date of separation so as to avoid dissipation of the community estate before distribution, (2) to ensure fair and sufficient child and spousal support awards, and (3) to achieve a division of community and quasi-community assets and liabilities on the dissolution or nullity of marriage or legal separation of the parties as provided under California law.

(b) Sound public policy further favors the reduction of the adversarial nature of marital dissolution and the attendant costs by fostering full disclosure and cooperative discovery.

(c) In order to promote this public policy, a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties. Moreover, each party has a continuing duty to immediately, fully, and accurately update and augment that disclosure to the extent there have been any material changes so that at the time the parties enter into an agreement for the resolution of any of these issues, or at the time of trial on these issues, each party will have a full and complete knowledge of the relevant underlying facts.

SEC. 3. Section 2102 of the Family Code is amended to read:

2102. (a) From the date of separation to the date of the distribution of the community or quasi-community asset or liability in question, each party is subject to the standards provided in Section 721, as to all activities that affect the assets and liabilities of the other party, including, but not limited to, the following activities:

(1) The accurate and complete disclosure of all assets and liabilities in which the party has or may have an interest or obligation and all current earnings, accumulations, and expenses, including an immediate,

full, and accurate update or augmentation to the extent there have been any material changes.

(2) The accurate and complete written disclosure of any investment opportunity, business opportunity, or other income-producing opportunity that presents itself after the date of separation, but that results from any investment, significant business activity outside the ordinary course of business, or other income-producing opportunity of either spouse from the date of marriage to the date of separation, inclusive. The written disclosure shall be made in sufficient time for the other spouse to make an informed decision as to whether he or she desires to participate in the investment opportunity, business, or other potential income-producing opportunity, and for the court to resolve any dispute regarding the right of the other spouse to participate in the opportunity. In the event of nondisclosure of an investment opportunity, the division of any gain resulting from that opportunity is governed by the standard provided in Section 2556.

(3) The operation or management of a business or an interest in a business in which the community may have an interest.

(b) From the date that a valid, enforceable, and binding resolution of the disposition of the asset or liability in question is reached, until the asset or liability has actually been distributed, each party is subject to the standards provided in Section 721 as to all activities that affect the assets or liabilities of the other party. Once a particular asset or liability has been distributed, the duties and standards set forth in Section 721 shall end as to that asset or liability.

(c) From the date of separation to the date of a valid, enforceable, and binding resolution of all issues relating to child or spousal support and professional fees, each party is subject to the standards provided in Section 721 as to all issues relating to the support and fees, including immediate, full, and accurate disclosure of all material facts and information regarding the income or expenses of the party.

SEC. 4. Section 2105 of the Family Code is amended to read:

2105. (a) Except by court order for good cause, before or at the time the parties enter into an agreement for the resolution of property or support issues other than pendente lite support, or, if the case goes to trial, no later than 45 days before the first assigned trial date, each party, or the attorney for the party in this matter, shall serve on the other party a final declaration of disclosure and a current income and expense declaration, executed under penalty of perjury on a form prescribed by the Judicial Council, unless the parties mutually waive the final declaration of disclosure. The commission of perjury on the final declaration of disclosure by a party may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other

remedies, civil or criminal, that otherwise are available under law for the commission of perjury.

(b) The final declaration of disclosure shall include all of the following information:

(1) All material facts and information regarding the characterization of all assets and liabilities.

(2) All material facts and information regarding the valuation of all assets that are contended to be community property or in which it is contended the community has an interest.

(3) All material facts and information regarding the amounts of all obligations that are contended to be community obligations or for which it is contended the community has liability.

(4) All material facts and information regarding the earnings, accumulations, and expenses of each party that have been set forth in the income and expense declaration.

(c) In making an order setting aside a judgment for failure to comply with this section, the court may limit the set aside to those portions of the judgment materially affected by the nondisclosure.

(d) The parties may stipulate to a mutual waiver of the requirements of subdivision (a) concerning the final declaration of disclosure, by execution of a waiver under penalty of perjury entered into in open court or by separate stipulation. The waiver shall include all of the following representations:

(1) Both parties have complied with Section 2104 and the preliminary declarations of disclosure have been completed and exchanged.

(2) Both parties have completed and exchanged a current income and expense declaration, that includes all material facts and information regarding that party's earnings, accumulations, and expenses.

(3) Both parties have fully complied with Section 2102 and have fully augmented the preliminary declarations of disclosure, including disclosure of all material facts and information regarding the characterization of all assets and liabilities, the valuation of all assets that are contended to be community property or in which it is contended the community has an interest, and the amounts of all obligations that are contended to be community obligations or for which it is contended the community has liability.

(4) The waiver is knowingly, intelligently, and voluntarily entered into by each of the parties.

(5) Each party understands that this waiver does not limit the legal disclosure obligations of the parties, but rather is a statement under penalty of perjury that those obligations have been fulfilled. Each party further understands that noncompliance with those obligations will result in the court setting aside the judgment.

SEC. 5. Section 2106 of the Family Code is amended to read:

2106. Except as provided in subdivision (d) of Section 2105 or in Section 2110, absent good cause, no judgment shall be entered with respect to the parties' property rights without each party, or the attorney for that party in this matter, having executed and served a copy of the final declaration of disclosure and current income and expense declaration. Each party shall execute and file with the court a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and current income and expense declaration was made on the other party or that service of the final declaration of disclosure has been waived pursuant to subdivision (d) of Section 2105 or in Section 2110.

SEC. 6. Section 2107 of the Family Code is amended to read:

2107. (a) If one party fails to serve on the other party a preliminary declaration of disclosure under Section 2104 or a final declaration of disclosure under Section 2105, or fails to provide the information required in the respective declarations with sufficient particularity, and if the other party has served the respective declaration of disclosure on the noncomplying party, the complying party may, within a reasonable time, request preparation of the appropriate declaration of disclosure or further particularity.

(b) If the noncomplying party fails to comply with a request under subdivision (a), the complying party may do either or both of the following:

(1) File a motion to compel a further response.

(2) File a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

(c) If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, impose money sanctions against the noncomplying party. Sanctions shall be in an amount sufficient to deter repetition of the conduct or comparable conduct, and shall include reasonable attorney's fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(d) If a court enters a judgment when the parties have failed to comply with all disclosure requirements of this chapter, the court shall set aside the judgment. The failure to comply with the disclosure requirements does not constitute harmless error.

(e) Upon the motion to set aside judgment, the court may order the parties to provide the preliminary and final declarations of disclosure that were exchanged between them. Absent a court order to the contrary,

the disclosure declarations shall not be filed with the court and shall be returned to the parties.

SEC. 7. Section 2122 of the Family Code is amended to read:

2122. The grounds and time limits for a motion to set aside a judgment, or any part or parts thereof, are governed by this section and shall be one of the following:

(a) Actual fraud where the defrauded party was kept in ignorance or in some other manner was fraudulently prevented from fully participating in the proceeding. An action or motion based on fraud shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the fraud.

(b) Perjury. An action or motion based on perjury in the preliminary or final declaration of disclosure, the waiver of the final declaration of disclosure, or in the current income and expense statement shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the perjury.

(c) Duress. An action or motion based upon duress shall be brought within two years after the date of entry of judgment.

(d) Mental incapacity. An action or motion based on mental incapacity shall be brought within two years after the date of entry of judgment.

(e) As to stipulated or uncontested judgments or that part of a judgment stipulated to by the parties, mistake, either mutual or unilateral, whether mistake of law or mistake of fact. An action or motion based on mistake shall be brought within one year after the date of entry of judgment.

(f) Failure to comply with the disclosure requirements of Chapter 9 (commencing with Section 2100). An action or motion based on failure to comply with the disclosure requirements shall be brought within one year after the date on which the complaining party either discovered, or should have discovered, the failure to comply.

SEC. 8. This act shall apply to any judgment that becomes final on or after January 1, 2002.

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.

CHAPTER 704

An act to amend Sections 5081, 5082, 5082.1, 5082.3, 5082.4, 5087, and 5088 of, to amend and repeal Sections 5081.1, 5082.2, 5083, and 5084 of, and to add Sections 5076, 5082.5, 5090, 5091, 5092, 5093, 5094, and 5095 to, the Business and Professions Code, relating to accountants.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 11, 2001.]

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

SECTION 1. It is the intent of the Legislature that the new education and experience requirements for the certified public accountant license established by this legislation not be revised or amended prior to the next review of the California Board of Accountancy required by Division 1.2 (commencing with Section 473).

Further, it is the intent of the Legislature that this review shall be limited to issues related to implementation of the new licensure requirements. In preparation for that review, the California Board of Accountancy shall collect statistical information including information on the number of applicants applying under Sections 5092 and 5093, the number of applicants passing the examination under Sections 5092 and 5093, the number of applicants applying and qualifying for licensure under Sections 5092 and 5093, and the number of applicants and licensees applying and qualifying for an authorization to sign reports on attest engagements under Section 5095. Also, it is the intent of the Legislature that prior to the next review required by Division 1.2, the California Board of Accountancy develop regulations and procedures to implement the peer review requirement mandated by Section 5076.

SEC. 2. Section 5076 is added to the Business and Professions Code, to read:

5076. (a) In order to renew its registration, a firm providing attest services, other than a sole proprietor or small firm as defined in Section 5000, shall complete a peer review prior to the first registration expiration date after January 1, 2006, and no less frequently than every three years thereafter.

(b) For purposes of this article, the following definitions apply:

(1) ''Peer review'' means a study, appraisal, or review conducted in accordance with professional standards of the professional work of a licensee or registered firm by another licensee unaffiliated with the licensee or registered firm being reviewed. The peer review shall include, but not be limited to, a review of at least one attest engagement representing the highest level of service performed by the firm and may

include an evaluation of other factors in accordance with requirements specified by the board in regulations.

(2) ''Attest services'' include an audit, a review of financial statements, or an examination of prospective financial information, provided, however, ''attest services'' shall not include the issuance of compiled financial statements.

(c) The board shall adopt regulations as necessary to implement, interpret, and make specific the peer review requirements in this section, including, but not limited to, regulations specifying the requirements for the approval of peer review providers, and regulations establishing a peer review oversight committee.

SEC. 3. Section 5081 of the Business and Professions Code is amended to read:

5081. An applicant for admission to the examination for a certified public accountant license shall:

(a) Not have committed acts or crimes constituting grounds for denial of a license under Section 480.

(b) File the application for the examination. An application for the examination shall not be considered filed unless all required supporting documents, fees, and the fully completed board-approved application form are received in the board office or filed by mail in accordance with Section 11003 of the Government Code on or before the specified final filing date.

(c) Meet one of the educational requirements specified in this article.

SEC. 4. Section 5081.1 of the Business and Professions Code is amended to read:

5081.1. Pursuant to subdivision (b) of Section 5090, an applicant for admission to the examination for a certified public accountant certificate may qualify for admission with one of the following:

(a) The applicant shall present satisfactory evidence that the applicant has either of the following:

(1) A baccalaureate degree from a university, college or other four-year institution of learning accredited by a regional institutional accrediting agency included in a list of these agencies published by the United States Secretary of Education under the requirements of the Higher Education Act of 1965 as amended (20 U.S.C. Sec. 1001 and following), with a major in accounting or related subjects requiring a minimum of 45 semester units of instruction in these subjects. If the applicant has received a baccalaureate degree in a nonaccounting major, the applicant shall present satisfactory evidence of study substantially the equivalent of an accounting major, including courses in related business administration subjects.

(2) A degree or degrees from a college, university, or other institution of learning located outside the United States that is approved by the

board as the equivalent of the baccalaureate degree described in paragraph (1). The board may require an applicant under this paragraph to submit documentation of his or her education to a credentials evaluation service approved by the board for evaluation and to cause the results of this evaluation to be reported to the board. The board shall adopt regulations specifying the criteria and procedures for approval of credential evaluation services. These regulations shall, at a minimum, require that the credential evaluation service (A) furnish evaluations directly to the board; (B) furnish evaluations written in English; (C) be a member of the American Association of Collegiate Registrars and Admission Officers, the National Association of Foreign Student Affairs, or the National Association of Credential Evaluation Services; (D) be used by accredited colleges and universities; (E) be reevaluated by the board every five years; (F) maintain a complete set of reference materials as specified by the board; (G) base evaluations only upon authentic, original transcripts and degrees and have a written procedure for identifying fraudulent transcripts; (H) include in the evaluation report, for each degree held by the applicant, the equivalent degree offered in the United States, the date the degree was granted, the institution granting the degree, an English translation of the course titles, and the semester unit equivalence for each of the courses; (I) have an appeal procedure for applicants; and (J) furnish the board with information concerning the credential evaluation service that includes biographical information on evaluators and translators, three letters of references from public or private agencies, statistical information on the number of applications processed annually for the past five years, and any additional information the board may require in order to ascertain that the credential evaluation service meets the standards set forth in this paragraph and in any regulations adopted by the board.

(b) The applicant shall present satisfactory evidence that the applicant has successfully completed a two-year course of college level study or received an associate of arts degree from a community college, either institution accredited by a regional or national accrediting agency or association that is included in a list published by the United States Commissioner of Education under the provisions of federal law specified in paragraph (1) of subdivision (a), and that the applicant has completed a minimum of 120 semester units which includes the study of accounting and related business administration subjects.

(c) The applicant shall show to the satisfaction of the board that he or she has had the equivalent of the educational qualifications required by subdivision (b), or shall pass a preliminary written examination approved and administered by an agency approved by the California State Department of Education and shall have completed a minimum of 10 semester units or the equivalent in accounting subjects. The 10

semester units in accounting subjects shall be completed at a college, university, or other institution of higher learning accredited at the college level by an agency or association that is included in a list published by the United States Commissioner of Education under the federal law specified in paragraph (1) of subdivision (a).

(d) The applicant shall be a public accountant registered under this chapter.

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 5. Section 5082 of the Business and Professions Code is amended to read:

5082. An applicant for a certified public accountant license shall have successfully passed examinations in subjects the board deems appropriate.

SEC. 6. Section 5082.1 of the Business and Professions Code is amended to read:

5082.1. All examinations provided for herein shall be held by the board at places as circumstances may warrant, and as often as may be necessary in the opinion of the board. The board may contract with any organization, governmental or private, for examination material or services. Within 90 days after the examination the board shall notify each candidate of his or her score. All examination records shall be preserved for a period of at least six months after the notification of scoring and any candidate shall, upon request to the board, have access to his or her records.

SEC. 7. Section 5082.2 of the Business and Professions Code is amended to read:

5082.2. For candidates seeking to be reexamined pursuant to subdivision (b) of Section 5090, a candidate who fails an examination provided for herein shall have the right to any number of reexaminations at subsequent examinations held by the board. A candidate who passes an examination in two or more subjects shall have the right to be reexamined in the remaining subject or subjects only, at subsequent examinations held by the board, and if he or she passes in the remaining subject or subjects within a period of time specified in the rules of the board, he or she shall be considered to have passed the examination.

This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 8. Section 5082.3 of the Business and Professions Code is amended to read:

5082.3. An applicant for a license as a certified public accountant may be deemed by the board to have met the examination requirements

of Section 5082, 5092, or 5093 if the applicant satisfies all of the following requirements:

(a) The applicant is licensed or has comparable authority under the laws of any country to engage in the practice of public accountancy.

(b) The International Qualifications Appraisal Board jointly established by the National Association of State Boards of Accountancy and the American Institute of Certified Public Accountants has determined that the standards under which the applicant was licensed or under which the applicant secured comparable authority meet its standards for admission to the International Uniform Certified Public Accountant Qualification Examination.

(c) The applicant has successfully passed the International Uniform Certified Public Accountant Qualification Examination referenced in subdivision (b).

SEC. 9. Section 5082.4 of the Business and Professions Code is amended to read:

5082.4. A Canadian Chartered Accountant in good standing may be deemed by the board to have met the examination requirements of Section 5082, 5092, or 5093, if he or she has successfully passed the Canadian Chartered Accountant Uniform Certified Public Accountant Qualification Examination of the American Institute of Certified Public Accountants or the International Uniform Certified Public Accountant Qualification Examination referenced in subdivision (b) Section 5082.3.

SEC. 10. Section 5082.5 is added to the Business and Professions Code, to read:

5082.5. The board may give credit to a candidate who has passed all or part of the examination in another state or territory, if the members of the board determine that the standards under which the examination was held are as high as the standards established for examination in this chapter.

SEC. 11. Section 5083 of the Business and Professions Code is amended to read:

5083. (a) Pursuant to subdivision (b) of Section 5090, an individual applying for licensure shall meet, to the satisfaction of the board, one of the following requirements:

(1) Four years of experience if the applicant qualified to sit for the exam by meeting the requirements of subdivision (b) or (c) of Section 5081.1.

(2) Three years of experience if the applicant qualified to sit for the exam by meeting the requirements of subdivision (a) or (d) of Section 5081.1 or meets the requirements of Section 5082.3.

(b) In order to be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting may be qualifying if completed by, or

in the employ of, a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing employment may be qualifying provided that this work was performed under the direct supervision of an individual licensed by a state to engage in the practice of public accountancy.

(c) Qualifying experience for licensure includes providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills.

(d) The board shall prescribe rules related to the experience requirements set forth in this section, including a requirement that each applicant demonstrate to the board satisfactory experience in the attest function as it relates to financial statements. For purposes of this subdivision, the attest function includes audit and review of financial statements in this section.

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 12. Section 5084 of the Business and Professions Code is amended to read:

5084. For applicants seeking licensure pursuant to subdivision (b) of Section 5090, the board shall grant one year's credit toward fulfillment of its public accounting experience requirement to a graduate of a college who has completed a four-year course with 45 or more semester units or the equivalent thereof in the study of accounting and related business administration subjects, of which at least 20 semester units or the equivalent thereof shall be in the study of accounting.

The members of the board shall prescribe rules establishing the character and variety of experience necessary to fulfill the experience requirements set forth in this section.

This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 13. Section 5087 of the Business and Professions Code is amended to read:

5087. (a) The board may issue a certified public accountant license to any applicant who is a holder of a valid and unrevoked certified public accountant license issued under the laws of any state, if the board determines that the standards under which the applicant received the license are substantially equivalent to the standards of education, examination, and experience established under this chapter and the applicant has not committed acts or crimes constituting grounds for denial under Section 480. To be authorized to sign reports on attest engagements, the applicant shall meet the requirements of Section 5095.

(b) The board may in particular cases waive any of the requirements regarding the circumstances in which the various parts of the examination were to be passed for an applicant from another state.

SEC. 14. Section 5088 of the Business and Professions Code is amended to read:

5088. (a) Any person who is the holder of a valid and unrevoked license as a certified public accountant issued under the laws of any state and who applies to the board for a license as a certified public accountant under the provisions of Section 5087 may, after application for licensure and after providing evidence of qualifying continuing education, perform the same public accounting services in this state as a certified public accountant licensed under Section 5092 or 5093 until the time his or her application for a license is granted or rejected.

(b) An applicant meeting the requirements of subdivision (a) who certifies that he or she has met the requirements of Section 5095 may perform attest services in this state until the time his or her application for a license is granted or rejected.

SEC. 15. Section 5090 is added to the Business and Professions Code, to read:

5090. (a) An applicant for the certified public accountant license shall comply with the education, examination, and experience requirements in either Section 5092 or 5093.

(b) Notwithstanding subdivision (a), an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may complete the examination and qualify for licensure based on the requirements in Sections 5081.1, 5082, 5082.2, 5083, 5084, and applicable regulations adopted by the board that were in effect on December 31, 2001, or comparable examination requirements adopted by the board in the event the form or format of the examination changes, provided the applicant qualifies and applies for licensure before January 1, 2006.

SEC. 16. Section 5091 is added to the Business and Professions Code, to read:

5091. At the time of application for the examination, the applicant shall choose whether he or she is making an application under Section 5092 or 5093. An applicant making an application under Section 5093 may change and apply under Section 5092 without having to retake sections of the examination already passed provided those sections were passed in accordance with the requirements of Section 5092.

SEC. 17. Section 5092 is added to the Business and Professions Code, to read:

5092. (a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements in subdivisions (b), (c), and

(d) of this section. The board may adopt regulations as necessary to implement this section.

(b) An applicant for the certified public accountant license shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided prior to admission to the examination for the certified public accountant license, except that an applicant who passed the examination before December 31, 2001, may provide this evidence at the time of application for licensure provided the applicant applies and qualifies for licensure before January 1, 2006.

(c) An applicant for the certified public accountant license shall pass an examination in accounting, auditing, and other subjects the board deems appropriate. An applicant who fails this examination has the right to reexamination. During the time this examination is a written, paper and pencil examination, an applicant who passes two or more subjects at any examination shall receive a conditional credit for those subjects and does not need to sit for reexamination in those subjects. The applicant shall have the right to be reexamined in the remaining subject or subjects only at the six subsequent consecutive examinations immediately following receipt of the conditional credit. If the remaining subject or subjects are passed during the six subsequent examinations, the candidate shall be considered to have passed the examination.

The conditional credit period provided in this section may be extended by the board upon a showing of extraordinary extenuating circumstances that prevented the applicant from retaking the examination during this period.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had two years of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

SEC. 18. Section 5093 is added to the Business and Professions Code, to read:

5093. (a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d) of this section. The board may adopt regulations as necessary to implement this section.

(b) (1) An applicant for admission to the certified public accountant examination under the provisions of this section shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided at the time of application for admission to the examination, except that an applicant who passed the examination before December 31, 2001, may provide this evidence at the time of application for licensure provided the applicant applies and qualifies for licensure before January 1, 2006.

(2) An applicant for issuance of the certified public accountant license under the provision of this section shall present satisfactory evidence that the applicant has completed at least 150 semester units of college education including a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be presented at the time of application for the certified public accountant license.

(c) An applicant for the certified public accountant license shall pass an examination in accounting, auditing, and other subjects the board deems appropriate. An applicant who fails this examination has the right to reexamination. During the time this examination is a written, paper and pencil examination, the applicant shall pass the examination in accordance with the requirements of paragraphs (1) and (2) of this subdivision.

(1) If at a given sitting of the examination an applicant passes two or more subjects, but does not pass all subjects, the applicant shall be given conditional credit for those subjects and the applicant does not need to sit for reexamination in those subjects, provided that:

(A) At that sitting the applicant sat for all subjects for which the applicant does not have credit.

(B) The applicant attained a minimum standardized score of 50 as determined by the board on each subject taken at that sitting.

(2) In order to pass the examination pursuant to the conditional credit described in paragraph (1), the applicant shall pass the remaining

subjects within six subsequent consecutive examinations given after the one at which the first subjects were passed.

(A) At each subsequent sitting at which the applicant seeks to pass in any additional subjects, the applicant sits for all subjects for which the applicant does not have credit.

(B) In order to receive credit for passing additional subjects in any subsequent sitting, the applicant attains a minimum standardized score of 50 as determined by the board on the subjects taken at that sitting.

The conditional credit period provided in this section may be extended by the board upon a showing of extraordinary extenuating circumstances that prevented the applicant from retaking the examination during this period.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had one year of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

SEC. 19. Section 5094 is added to the Business and Professions Code, to read:

5094. (a) In order for education to be qualifying, education shall meet the standards described in subdivision (b) or (c) of this section.

(b) At a minimum, education must be from a university, college, or other institution of learning accredited by a regional institutional accrediting agency included in a list of these agencies published by the United States Secretary of Education under the requirements of the Higher Education Act of 1965 as amended (20 U.S.C. Sec. 1001 and following).

(c) Education from a college, university, or other institution of learning located outside the United States may be qualifying provided it is deemed by the board to be equivalent to education obtained under subdivision (b). The board may require an applicant to submit documentation of his or her education to a credentials evaluation service approved by the board for evaluation and to cause the results of this evaluation to be reported to the board in order to assess educational equivalency.

(d) The board shall adopt regulations specifying the criteria and procedures for approval of credential evaluation services. These regulations shall, at a minimum, require that the credential evaluation service (1) furnish evaluations directly to the board, (2) furnish evaluations written in English, (3) be a member of the American Association of Collegiate Registrars and Admission Officers, the National Association of Foreign Student Affairs, or the National Association of Credential Evaluation Services, (4) be used by accredited colleges and universities, (5) be reevaluated by the board every five years, (6) maintain a complete set of reference materials as specified by the board, (7) base evaluations only upon authentic, original transcripts and degrees and have a written procedure for identifying fraudulent transcripts, (8) include in the evaluation report, for each degree held by the applicant, the equivalent degree offered in the United States, the date the degree was granted, the institution granting the degree, an English translation of the course titles, and the semester unit equivalence for each of the courses, (9) have an appeal procedure for applicants, and (10) furnish the board with information concerning the credential evaluation service that includes biographical information on evaluators and translators, three letters of references from public or private agencies, statistical information on the number of applications processed annually for the past five years, and any additional information the board may require in order to ascertain that the credential evaluation service meets the standards set forth in this subdivision and in any regulations adopted by the board.

SEC. 20. Section 5095 is added to the Business and Professions Code, to read:

5095. (a) To be authorized to sign reports on attest engagements, a licensee shall complete a minimum of 500 hours of experience, satisfactory to the board, in attest services.

(b) To be qualifying under this section, attest experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy and provide attest services, and this experience shall be verified. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy and perform attest services, and this experience shall be verified. An applicant may be required to present work papers or other evidence substantiating that the applicant has met the requirements of this section and applicable regulations.

(c) An individual who qualified for licensure by meeting the requirements of Section 5083 shall be deemed to have satisfied the requirements of this section.

(d) The board shall adopt regulations to implement this section, including, but not limited to, a procedure for applicants under Section 5092 or Section 5093 to qualify under this section.

SEC. 21. This act shall become operative only if Senate Bill No. 133 of the 2001–02 Regular Session is enacted and becomes effective on or before January 1, 2002.

CHAPTER 705

An act to add and repeal Article 3.5 (commencing with Section 51725) of Chapter 5 of Part 28 of the Education Code, relating to high-tech high schools.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 11, 2001.]

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

SECTION 1. Article 3.5 (commencing with Section 51725) is added to Chapter 5 of Part 28 of the Education Code, to read:

Article 3.5. High-Tech High School Grant Program

51725. (a) The High-Tech High School Grant Program is hereby established to provide 10 one-time grants to eligible school districts or charter schools for purposes of establishing new high-tech high schools.

(b) As used in this article, ''high-tech high school'' means a public comprehensive high school maintained by a school district or charter school that offers a very rigorous college preparation curriculum with an emphasis in science, mathematics, and engineering, and also may include digital arts and media. Technology shall be integrated throughout the curriculum and shall be a fundamental tool for both teaching and learning. Instruction at a high-tech high school shall be consistent with the academic content standards adopted by the State Board of Education and the applicable curriculum framework content standards adopted by the State Board of Education. A high-tech high school may not include a school maintained by the California Youth Authority, or operated by a regional occupational center or program, continuation high school, community day school, a State Special School, distance learning school, or independent study school. An adult

education program may not be offered at a high-tech high school. Nothing in this section prohibits a comprehensive high school that operates a high-tech high school from having an affiliation with a regional occupational center or program, but the regional occupational center or program shall not be eligible for funding under this article and may not establish a high-tech high school under this article.

(c) The Superintendent of Public Instruction shall administer the application process for the award of grants. The Superintendent of Public Instruction, with the approval of the State Board of Education shall award grants on a competitive basis. The amount of each grant is two million dollars ($2,000,000). The award of a grant requires a local match that is at least equal to the amount of the grant. All funds awarded pursuant to this section shall be used solely for the establishment of high-tech high schools. Notwithstanding any other provision of law, the Superintendent of Public Instruction shall not be required to adopt regulations in order to administer the High-Tech High School Grant Program and allocate program funds.

(d) Funding for the purposes of this article is contingent on an appropriation made in the annual Budget Act or other legislation.

51726. (a) The Superintendent of Public Instruction shall develop an application for the High-Tech High School Grant Program.

(b) A school district or charter school that chooses to participate shall submit an application to the Superintendent of Public Instruction. The superintendent, director, or fiscal agent of the school district or charter school shall sign and certify the application.

(c) The Superintendent of Public Instruction shall convene an advisory board to assist in the review of applications. The advisory board shall be comprised of an equal number of members appointed by the Superintendent of Public Instruction and by the Office of the Secretary for Education. The advisory board shall do all of the following:

(1) Review the applications for completeness.

(2) Consider the proposed curriculum of the potential grant recipients to ensure minimum requirements are met in providing mathematics, science, and engineering coursework while integrating technology throughout the curriculum.

(3) Review information provided by the potential grant recipients regarding commitments from educational, business, and or other partners, including, but not limited to, financial assistance, technical assistance, administrative assistance, and internship and job-training assistance.

(4) Verify the local matching requirement.

(5) Review other criteria as deemed necessary by the Superintendent of Public Instruction or the advisory board. These criteria shall include, but not be limited to, all of the following:

(A) Geographic representation among the funded sites.

(B) Consideration for rural schools, urban schools, and other schools that are not located in parts of the state that are typically associated with high technology.

(C) Consideration for schools that will serve high-poverty or educationally disadvantaged pupils.

(d) The advisory board shall make recommendations to the Superintendent of Public Instruction regarding which applicants should be awarded grants under this article. The Superintendent of Public Instruction, with the approval of the State Board of Education, shall select the grant recipients and award the grant funds to the selected school districts and charter schools. At least 40 percent of the applicants recommended by the advisory board and at least 40 percent of the grant recipients selected pursuant to this subdivision shall serve communities where a minimum of 50 percent of the pupils in the elementary schools are eligible for free or reduced price meals through the school lunch program of the United States Department of Agriculture.

(e) Notwithstanding any other provision of law, the Superintendent of Public Instruction may request the Controller to release funds to grant recipients, as determined by the Superintendent of Public Instruction, any time after the effective date of the act adding this section, in order to quickly expedite the establishment of new high-tech high schools.

51727. (a) The Superintendent of Public Instruction shall accept applications and award grants in two phases.

(1) Not more than five grants shall be awarded in the first phase. Applications shall be due February 1, 2002. The Superintendent of Instruction shall complete the review of applications pursuant to subdivision (c) of Section 51726 and make awards pursuant to subdivision (d) of Section 51726 no later than March 31, 2002. The proposed high-tech high school for which a school district or charter school receives funding shall be operational by September 30, 2002. If the Superintendent of Public Instruction does not receive five applications that merit funding pursuant to subdivision (c) of Section 51726, some or all of the phase one grants may be delayed until the second phase with the approval of the State Board of Education.

(2) The remaining grants shall be awarded in the second phase. Applications shall be submitted by February 1, 2003. The Superintendent of Public Instruction shall complete the review of applications pursuant to subdivision (c) of Section 51726 and make awards pursuant to subdivision (d) of Section 51726 no later than March 31, 2003. The proposed high-tech high school for which a school district or charter school receives funding shall be operational by September 30, 2003.

(b) The Superintendent of Public Instruction, with the approval of the State Board of Education, may, upon a showing of good cause and if necessary, extend any of the following dates:

(1) The deadline for application submission.

(2) The date the grant award is to be made.

(3) The date by which a high-tech high school is to be operational.

(c) If a grant recipient fails to make the high-tech high school operational by the specified date, the Superintendent of Public Instruction, with the approval of the State Board of Education may rescind the grant award and award the grant funds to another eligible grant recipient as determined by the Superintendent of Public Instruction, with the approval of the State Board of Education.

(d) If the grant funds awarded pursuant to this article are not used towards the establishment and implementation of a new high-tech high school, the Superintendent of Public Instruction shall withhold an amount equal to the funds the school district or charter school received pursuant to this article from the next monthly principal apportionment payment. Superintendent of Public Instruction shall conduct compliance visits as required to ensure that the funds are used appropriately.

51728. (a) The Superintendent of Public Instruction shall require each high-tech high school grant recipient funded under this article to provide an evaluation which details all of the following:

(1) The academic achievement of pupils enrolled in the high-tech high schools.

(2) The level of support provided by educational, business, and foundation partners.

(3) The feasibility for broad-scale development of similar high-tech high school programs.

(b) The Superintendent of Public Instruction shall report this information to the Legislature, Governor, and the Department of Finance.

51729. This article 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. 2. The Superintendent of Public Instruction shall report, by May 1, 2003, to the Assembly Committee on Appropriations, the Senate Committee on Appropriations, the Assembly Committee on Education, and the Senate Committee on Education on the status of the grant program created by Article 3.5 (commencing with Section 51725) of Chapter 5 of Part 28 of the Education Code.